SPOUSES ROMAN & AMELITA T. CRUZ AND SPOUSES SEVERINO & PRIMITIVA T. BAUTISTA, PETITIONERS, VS. SPOUSES ALFREDO & MELBA TORRES AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 121939. October 04, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal via certiorari from the decision of the Court of Appeals[1] affirming that of the Regional Trial Court, Pasig City, Branch 162[2] ordering petitioners to surrender to respondents the lot described in TCT No. 42806 and remove petitioners' house and other improvements thereon, and to pay respondents P5,000.00 as reasonable attorneys fees.

The facts as found by the Court of Appeals and which bind the parties in this appeal are the following:

> "x x x plaintiff Alfredo Torres is the elder brother of defendants Amelia Torres Cruz and Primitiva Torres Bautista. Their parents are the late Simplicio and Gregoria Castañeda Torres. In 1946, while in his youthful years, Alfredo worked as a mechanic for a US Army ambulance unit stationed at Manila. From his earnings, he purchased by installments from Ortigas Madrigal Co., Inc. a parcel of land in Barangay Saniga, Mandaluyong, Rizal (now Mandaluyong City), with an area of 299 square meters. When his American employer left, he was employed as a municipal electrician in Mandaluyong. In 1956, he was issued the land title (T.C.T. No. 42806).
>
> "Meanwhile, the Torres family were being evicted from their residence. Alfredo allowed them to construct their dwelling on the lot. Eventually, Alfredo's sisters married and left the house, except his sisters Amelia and Primitiva and their spouses.
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> "On February 2, 1958, Alfredo and co-plaintiff Melba Baldeo were married. They lived with his parents and defendants-sisters but left after a year because the house was overcrowded and they wanted privacy.
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> "Subsequently, Alfredo mortgaged the lot to finance his wife's medical board examinations and internship but redeemed it a year later.
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> "In 1962, Alfredo verbally asked his sisters Amelia and Primitiva to vacate the premises because he needed the lot to construct a medical clinic for his wife. Amelia and Primitiva requested an extension and Alfredo agreed.
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> "After the death of his father Simplicio in 1970, Alfredo again demanded from his sisters to vacate the place but the latter stubbornly refused and even claimed that their father is the real owner of the lot.
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> "Despite the refusal of Amelia and Primitiva to vacate the premises, Alfredo continued paying the realty taxes on the lot. However, after 1982, he stopped paying the taxes for he realized that only his sisters are benefiting from the lot.
>
> "On September 2, 1987, Alfredo and Melba through counsel, sent Amelia and Primitiva a final letter of demand for them to vacate the lot.

> "The case was referred to the barangay which issued a certificate to file action when the parties failed to settle amicably. Thus, the instant complaint was filed on October 7, 1987."[3]

On December 18, 1990, the trial court rendered decision, the decretal portion of which reads:

> "WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in favor of plaintiffs Alfredo and Melba Torres and against defendants spouses Roman and Amelia Cruz and spouses Severino and Primitiva Bautista, ordering the latter and all other persons claiming rights over them to surrender the lot described in TCT No. 42806 to plaintiffs, and remove at their expense the house they are now occupying as well as additional constructions thereon; to pay the amount of P5,000.00 pesos as reasonable attorney's fees.
>
> "With costs against defendants.
>
> "SO ORDERED."

In due time, defendants appealed to the Court of Appeals.[4]

After due proceedings, on June 23, 1995, the Court of Appeals rendered decision affirming the appealed decision, with costs against appellants.

Hence, this appeal.[5]

On March 20, 1996, the Court required private respondents to comment on the petition within ten (10) days from notice.[6]

On September 6, 1996, private respondents filed their belated comment.[7] On October 30, 1996, petitioners filed a reply to the comment.[8]

We deny the petition.

The sole issue raised is whether it is the regional trial court or the municipal trial court which has jurisdiction over the subject of the action or suit, petitioners contending that the action is one for unlawful detainer within the jurisdiction of a municipal trial court.

We find petitioners' contention untenable.

The "jurisdiction of the court over the subject matter of the action 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. The jurisdiction of the court can not 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."[9]

The present action, although termed as one for "reconveyance of real property" is actually one for recovery of the right to possess or accion publiciana. This is an action for recovery of the right to possess and is a plenary action in an ordinary civil proceeding in a regional trial court to determine the better right of possession of realty independently of the title.[10] Accion publiciana or plenaria de posesion is also used to refer to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.[11] In such case, the regional trial court has jurisdiction.[12] Here, the parties admit that the subject real property is registered in the name of respondent Alfredo Torres. In the regional trial court what respondent sought was to recover possession of the subject real property alleging that he owned the lot on which he had allowed his father (now deceased) and sisters, petitioners herein, to erect their houses. Since the complaint alleged that respondent Alfredo Torres was the owner of the subject lot and that he merely allowed his father Simplicio Torres and his sisters Amelia and Primitiva to construct their houses thereon, and that since 1972

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respondent pleaded to petitioners to remove their houses and such additional constructions thereon as respondent needed the lot for his own use, the action is plainly one for recovery of possession of real property, or accion publiciana, filed on October 7, 1987, more than one year after dispossession or when possession became unlawful, which is within the jurisdiction of a regional trial court.[13] As heretofore stated, the jurisdiction of the court is determined by the allegations of the complaint, not by the answer nor by the evidence adduced at the trial. Thus, the jurisdiction of the lower court is not affected by the fact that petitioners asserted in their answer to the complaint that the subject lot was truly owned by the estate of their father, also the father of respondent, or that the last written demand to vacate was given on September 2, 1987, just more than a month prior to the filing of the action. Since initial demand to vacate was made in 1972, petitioners' occupancy became unlawful. Subsequent demands were merely in the nature of reminders or reiterations of the original demand, the one-year period to commence suit is counted from the first demand.[14] When the dispossession lasted beyond one year, the proper action is accion publiciana for recovery of possession of the subject property filed in the regional trial court.[15]

IN VIEW WHEREOF, the Court DENIES the petition for review on certiorari and AFFIRMS the decision of the Court of Appeals in CA-G.R. CV No. 33757, promulgated on June 23, 1995, and its resolution adopted on September 7, 1995.

No costs.

SO ORDERED.

Puno, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., (Chairman), and Kapunan, JJ., on official leave.

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[1] In CA G. R. CV No. 33757, promulgated on June 23, 1995, Sandoval-Gutierrez, J., ponente, Cui and Vasquez, JJ., concurring.

[2] In Civil Case No. 55100, Judge Manuel S. Padolina, presiding.

[3] Petition, Rollo, pp. 3-16, on pp. 4-6.

[4] Docketed as CA-G. R. CV No. 33757.

[5] Petition, filed on September 29, 1995, Rollo, pp. 3-17.

[6] Rollo, p. 46.

[7] Rollo, pp. 51-53.

[8] Rollo, pp. 55-59.

[9] Serdoncillo vs. Benolirao, G.R. No. 118328, October 8, 1998; San Miguel Corporation vs. NLRC, 255 SCRA 133[1996]; Boleyley vs. Villanueva, G. R. No. 128734, September 14, 1999.

[10] Aguilon vs. Bohol, 79 SCRA 482[1977]; Desbarats vs. de Laureano, 18 SCRA 116[1966].

[11] Bernabe vs. Dayrit, 125 SCRA 423, 425[1983].

[12] Bernabe vs. Dayrit, supra.

[13] Javier vs. Veridiano, 237 SCRA 565, 573[1994]; Medina vs. Court of Appeals, 181 SCRA 837[1990];

Bernabe vs. Dayrit, supra; del Castillo vs. Aquino, 212 SCRA 169[1992].

[14] Pacis vs. Court of Appeals, G. R. No. 102676, February 3, 1992, min. res., cited in Summary of 1992 Supreme Court Rulings, Part III, by Atty. Daniel T. Martinez, p. 1847; Desbarats vs. de Laureano, supra.

[15] Desbarats vs. de Laureano, supra.

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