

**GREGORIO C. JAVELOSA, PETITIONER, VS. COURT OF APPEALS,
SPOUSES CORAZON J. DE LEON & MELVIN DE LEON, SPOUSES
KRISTINE SOLINAP & ALFONSO SOLINAP, MARLINA J.
BALLEZA, MYRNA J. SER...**

G.R. No. 124292. December 10, 1996

Ponente: PUNO, J.

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PUNO, J.:

The subject land, with an area of 2,061 square meters, situated in Jaro, Iloilo City, was originally owned by petitioner Gregorio Javelosa. Sometime in the 70's, petitioner, mortgaged said land to Jesus Jalbuena to secure several loans. Petitioner failed to pay his loans and Jalbuena, as mortgagee, foreclosed on the land and purchased it as highest bidder at the foreclosure sale.

During the one-year period of redemption, petitioner-mortgagor filed an action against the mortgagee at the Regional Trial Court (RTC) of Iloilo City to annul the mortgage contracts and public auction sale (Civil Case No. 16460).[1] He claimed that the mortgage contracts were illegal and the conduct of the foreclosure sale was irregular.

While the case was pending, the period of redemption prescribed. Consequently, the mortgagee consolidated title over the land, caused the cancellation of the mortgagor's title and the issuance of a new title in his name. Thereafter, petitioner obtained an Order[2] from the RTC in Civil Case No. 16460 restraining the mortgagee from further effecting the foreclosure sale of the property.

In the early part of December 1986, the mortgagee divided the subject land among his married daughters (private respondents herein). On December 27, 1986, the mortgagee died. He was substituted by his heirs, private respondents, in the pending RTC case for annulment of mortgage and foreclosure sale. On January 19, 1987, title to the subject lot was issued in the names of private respondents.

In the meantime, the RTC case for annulment of mortgage and foreclosure sale continued to drag on. On June 1, 1993, private respondents, as registered owners, sent a letter to petitioner-mortgagor demanding that he vacate the subject premises within ten (10) days from receipt thereof. Despite receipt of the demand letter on June 4, 1993, petitioner-mortgagor refused to vacate said lot. Thus, on August 6, 1993, private respondents filed a complaint for illegal detainer before the Municipal Trial Court (MTC) in Cities, Iloilo City, and sought to eject petitioner from the premises.

Petitioner, in his Answer,[3] asserted his ownership over the disputed land. He claimed that he had a TCT in his name but that the mortgagee (father and predecessor-in-interest of private respondents), in bad faith, was able to cause his title to be cancelled and a new title issued in his name despite the pendency of the RTC case questioning the award of the subject land to the mortgagee in the foreclosure proceedings. Thus, petitioner denied he was illegally occupying the land. He claimed that he was legally entitled to the continued possession thereof by virtue

of pending legal incidents in his RTC case for annulment of mortgage and foreclosure sale, from which transactions the mortgagee (predecessor-in-interest of private respondents) derived his title.

The MTC decided the unlawful detainer case in favor of private respondents and ordered petitioner to vacate the premises and pay reasonable rental. The MTC held that the pendency of the case for annulment of mortgage in the RTC would not abate the proceedings in the unlawful detainer case filed before it for the issues in these cases are distinct from each other.[4]

Petitioner elevated the case to the RTC. He alleged that the ejectment case was improperly filed with the MTC for private respondents (plaintiffs therein) should have prayed instead for the issuance of a writ of possession with the RTC where the case for annulment of mortgage and foreclosure sale was pending.

Without ruling on the propriety of the filing of the ejectment case before the MTC, the RTC reversed the MTC decision on a different ground. It held that the complaint was filed out of time for under Section 1, rule 70 of the Rules of Court, and unlawful detainer case must be filed within one year from the time title was issued in private respondents' name, i.e., from January 19, 1987, and not from the last demand to vacate made by private respondents (plaintiffs therein). Thus, the ejectment case initiated on August 6, 1993 was filed beyond the one-year prescriptive period. The RTC dismissed the ejectment case.[5]

In their appeal to the Court of Appeals, private respondents alleged that the RTC erred in holding that the complaint for unlawful detainer was filed out of time. The Court of Appeals reversed the RTC decision and reinstated the decision of the MTC. It held that the complaint for unlawful detainer was filed on time for the prescriptive period should be counted not from the issuance of title in the name of plaintiffs (private respondents herein), but from the date of the last demand to vacate made against the defendant. Moreover, the fact that private respondents were never in prior physical possession of the subject land is of no moment for prior physical possession is necessary only in forcible entry cases. The Court of Appeals thus ordered the petitioner (defendant in the ejectment case) to vacate the premises and pay reasonable rentals.[6]

Hence, this petition for review on certiorari.

In this Court, petitioner does not raise the issue regarding the timeliness of the filing of the ejectment case against him. For the first time, he puts in issue the nature of the suit filed against him. He contends that the complaint filed before the MTC is not an unlawful detainer suit but one for accion publiciana cognizable by the RTC. Petitioner argues that a reading of the complaint reveals there was no allegation as to how entry on the land was made by petitioner-mortgagor or when the latter unlawfully took possession of said land. Citing the case of *Sarona v. Villegas*,[7] petitioner contends that the omission of these jurisdictional facts stripped the MTC of jurisdiction over the case.

The petition is devoid of merit.

It is settled that jurisdiction of court over the subject matter of the litigation is determined by the allegations in the complaint. It is equally settled that an error in jurisdiction can be raised at any time and even for the first time on appeal.[8]

The issue of jurisdiction in the case at bar depends on the nature of the case filed by private respondents in the MTC. If it is an unlawful detainer case, the action was properly filed with the MTC. However, if the suit is one for accion publiciana, jurisdiction is with the RTC and the complaint should be dismissed. To resolve the issue, we should examine the specific allegations made by private respondents in their complaint. The complaint for unlawful detainer[9] contained the following material allegations, viz:

"x x x

"2. Plaintiffs (private respondents) are the registered owners of a parcel of land x x x covered by Transfer Certificate of Title No. T-74417 x x x;

"3. Defendant (petitioner-mortgagor) has been illegally occupying the above described property without the consent of the herein plaintiffs, thus unlawfully withholding possession of the same from them who are the owners and the ones entitled to the physical possession thereof;

"4. On June 1, 1993, plaintiffs x x x sent a letter dated May 26, 1993 to the defendant demanding that he vacate the premises within ten days from receipt of the said letter x x x;

"x x x

"6. The said letter was received by the defendant on June 4, 1993 x x x;"

"x x x

"8. Having received the demand to vacate the property in question, defendant is now unlawfully withholding possession of the x x x property from the plaintiffs who are entitled to the physical possession thereof;

"9. As a consequence of the refusal of the defendant to vacate the premises x x x the plaintiffs were constrained to file this action for illegal detainer against him in order to take away the physical possession thereof from them and to place them in de facto possession of the said property;

"x x x"

Clearly, private respondents (as plaintiffs therein) alleged in their complaint that they are the registered owners of the subject land and therefore, entitled to possession thereof; that petitioners were illegally occupying the premises without their consent and thus unlawfully withholding possession from them; and, despite receipt of their demand to vacate the premises, petitioner refused to leave the property. On the face of the complaint, it also appears that private respondents were seeking to recover merely the physical possession or possession de facto of the subject land. Private respondents did not allege the incidents respecting the mortgage of the land and the pending RTC case questioning the mortgage contract as the issue involved therein is ownership which has no place in an ejectment case. In fine, the allegations in the complaint make out a case for unlawful detainer. We have ruled in a long line of cases^[10] that "in an action for unlawful detainer, a simple allegation that defendant is unlawfully withholding possession from plaintiff is x x x sufficient for the words 'unlawfully withholding' imply possession on the part of defendant, which was legal in the beginning, having no other source than a contract, express or implied, possession which had later expired as a right and is being withheld by defendant." Thus, in the case at bar, private respondents' allegation in their complaint that petitioner was unlawfully withholding possession of the land from them is sufficient to make out a case for unlawful detainer.

In *Co Tiamco v. Diaz*,^[11] the Court emphasized that "the principle underlying the brevity and simplicity of pleadings in forcible entry and unlawful detainer cases rests upon considerations of public policy. Ejectment cases are summary in nature for they involve perturbation of social order which must be restored as promptly as possible and, accordingly, technicalities or details of procedure should be carefully avoided."

The ruling in the *Sarona* case^[12] cited by petitioner i.e., that a complaint for unlawful detainer should allege when and how entry on the land was made by the defendant, finds no application to the case at bar. In *Sarona*, the main issue was the timeliness of the filing of the complaint before the MTC. In forcible entry cases, the prescriptive period is counted from the date of defendant's actual entry on the land; in unlawful detainer, from the date of the last demand to vacate. Hence, to determine whether the case was filed on time, there was a necessity to ascertain whether the complaint was one for forcible entry or unlawful detainer. In light of these considerations, the Court ruled that since the main distinction between the two actions is when and how defendant entered the

land, the determinative facts should be alleged in the complaint. Thus, in *Sarona*, the jurisdiction of the MTC over the complaint was never in issue for whether the complaint was one for forcible entry or unlawful detainer, the MTC had jurisdiction over it. The case at bar is different for at issue is the jurisdiction of the MTC over the unlawful detainer case for petitioner (defendant therein) asserts that the case is one for *accion publiciana* cognizable by the RTC.

Petitioner likewise insists that he is entitled to the physical possession of the property since he has been in actual, continuous possession thereof as owner-mortgagor. He contends that private respondents have never been in actual physical possession of the land since they have not prayed for the issuance of a writ of possession with the RTC where the case assailing the sale of the land was pending and where the parties' adverse claims of ownership are being litigated.

We find petitioner's contentions untenable.

Again, it is settled that prior physical possession is indispensable only in actions for forcible entry but not in unlawful detainer. Since we have ruled that MTC case filed against petitioner is one for unlawful detainer, petitioner's prior possession of the land is of no moment. Private respondents are entitled to its possession from the time title was issued in their favor as registered owners. An action for unlawful detainer may be filed when possession by a landlord, vendor, vendee or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of their right to hold possession, by virtue of a contract, express or implied.[13]

Under the Rules, if the mortgaged property is not redeemed within one year from the foreclosure sale, the purchaser at public auction is entitled to possession of the property.[14] To obtain possession, the vendee or purchaser may either ask for a writ of possession or bring an appropriate independent action, such as a suit for ejectment, which private respondents did. The RTC case assailing the public auction sale of the property and seeking annulment of mortgages did not preclude the filing of an ejectment case against petitioner.[15] We have consistently ruled that the pendency of an action for annulment of sale and reconveyance (which necessarily involves the issue of ownership) may not be successfully pleaded in abatement of an action for ejectment, the issue in the latter being merely physical possession.[16] To be sure, private respondents' most effective remedy was to file a separate action for unlawful detainer against petitioner.[17] They cannot ask for a writ of possession from the RTC where the case for annulment of mortgage and foreclosure sale is pending because after the mortgagee was able to consolidate his title on the land and a new title issued in his name, petitioner was able to obtain an Order[18] from the RTC directing the mortgagee (predecessor-in-interest of private respondents) to desist from further enforcing the foreclosure proceedings.

The case of *Joven v. Court of Appeals*[19] cited by petitioner is not on all fours with the case at bar. In *Joven*, DBP as mortgagee was not able to consolidate its title over the foreclosed land nor cause the cancellation of title in the mortgagor's name. Although the title was still in the name of the mortgagor, DBP sold the land to private respondents and the latter, without first securing a court order, took the law into their own hands and entered said land. Hence, it was the mortgagor who filed and successfully maintained an action for forcible against private respondents, the transferees of the mortgagee.

The factual mould of the case at bar is different. The mortgagee (predecessor-in-interest of private respondents) was able to consolidate his ownership over the foreclosed land, cause the cancellation of title in the name of petitioner-mortgagor and the issuance of a new title in his own name. It was this title that he passed on to his daughters, private respondents herein. As aforesaid, a restraining order was issued by the RTC where the case for annulment of foreclosure sale is pending after the mortgagee had consolidated his ownership over the land,

hence, private respondents were left with no choice but to file a separate and independent action for unlawful detainer to recover physical possession of the property. Unlike in the Joven case, private respondents did not take the law into their own hands and entered the property without the benefit of a court order. They sought the aid of the court precisely to settle the issue of physical possession or possession de facto of the land when they filed the ejectment case with the MTC.

We find that private respondents have adequately proved that they are entitled to possess the subject land as the registered owners thereof. The age-old rule is that the person who has a torrens title over a land is entitled to possession thereof.[20] Except for the bare claim that the title of private respondents was obtained in bad faith, petitioner has pointed to no right to justify his continued possession of the subject property.

Be that as it may, we reiterate the rule that the award of possession de facto over the subject land to private respondents would not constitute res judicata as to the issue of ownership thereof, which issue is still being litigated before the RTC of Iloilo City where the case for annulment of mortgages and foreclosure proceedings is pending.

IN VIEW WHEREOF, the petition is DENIED. The Decision of the Court of Appeals, dated January 17, 1996, is AFFIRMED in toto. No costs.

SO ORDERED.

Ragalado (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

[1] Rollo, pp. 80-93.

[2] Dated April 29, 1985; Rollo, p. 94.

[3] Rollo, pp. 130-134.

[4] Decision, dated May 29, 1995, penned by Judge Nelida S. Medina; Rollo, pp. 137-146.

[5] Decision dated July 26, 1995, penned by Judge Edgar D. Gustilo, Rollo, pp. 120-124.

[6] Decision, dated January 17, 1996; Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Presiding Justice and Chairman Nathanael P. De Pano, Jr. and Associate Justice Quirino D. Abad Santos, Jr.; Rollo, pp. 50-55.

[7] 22 SCRA 1257 (1968).

[8] De Leon v. Court of Appeals, 245 SCRA 166 (1995); Lozon v. national Labor Relations Commission, 240 SCRA 1 (1995).

[9] Rollo, pp. 75-78

[10] Sumulong v. Court of Appeals, 232 SCRA 372 (1994), citing Maddamu v. Judge of Municipal Trial Court of Manila, 74 Phil. 230 (1943); Pharma Industries, Inc. v. Pajarillaga, 100 SCRA 339 (1980); Pangilinan v. Aguilar, 43 SCRA 136 (1972); Savinada v. Tuason & Co., 83 Phil. 840 (1949), citing our ruling in Co Tiamco v. Diaz, 75 Phil. 672 (1945).

[11] Supra.

[12] Supra.

[13] De la Paz v. Panis, 245 SCRA 242 (1995).

[14] Section 35, Rule 39, Revised Rules of Court.

[15] Heirs of Francisco Guballa, Sr. v. Court of Appeals, 168 SCRA 518 (1988).

[16] Asset Privatization Trust v. Court of Appeals, 229 SCRA 627 (1994); Ang Ping v. Regional Trial Court of Manila, 154 SCRA 77 (1987); Drilon v. Gaurana, 149 SCRA 342 (1987); De la Cruz v. Court of Appeals, 133 SCRA 520 (1984).

[17] There are two (2) kinds of unlawful detainer: (1) that filed against a tenant, and (2) that against a vendee or vendor, or other person unlawfully withholding possession of any land or building after the expiration or termination of the right to hold possession by virtue of any contract, express or implied; Section 1, Rule 70, Rules of Court.

[18] Supra.

[19] 212 SCRA 700, 708 (1992).

[20] Pangilinan v. Aguilar, 43 SCRA 136 (1972).

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