

MARIA ARCAL, JOSEFINA ARCAL, MARCIANA ARCAL, AND VIRGILIO ARCAL, PETITIONERS VS. COURT OF APPEALS, DANILO BUCAL, COSTAN & LETTY RICAFFRENTE, RENIE & CENY RICAFFRENTE, SANCHE & LAN...

G.R. No. 127850. January 26, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition seeks the review of the decision of the Court of Appeals in CA-G.R SP No. 40824 dated November 15, 1996 and its Resolution dated January 13, 1997.

Petitioner as plaintiffs filed on August 31, 1995 a complaint for unlawful detainer docketed as Civil Case No. 370 before the Municipal Trial Court of Tanza, Cavite against private respondents as defendants. Subject of the complaint was a 21,435 square meter parcel of land designated as Lot No. 780 of Santa Cruz de Malabon Estate Subdivision, Cavite and covered by Transfer Certificate of Title No. 26277 in the names of Maria, Josefina, Marciana and Marcelina[1] Arcal[2].

The complaint alleged, among others, that:

- Defendants herein occupied the subject parcel of land described above thru plaintiffs' implied tolerance, or permission but without contract with herein plaintiffs. From the dates of their occupancy, plaintiffs did not collect any single centavo from defendants, nor the latter pay to plaintiffs any rental for their occupancy therein;
- On June 18, 1984, plaintiffs herein, except Virgilio Arcal, filed an ejectment suit against substantially all of defendants herein with the Municipal Trial Court of Tanza, Cavite, docketed as Civil Case No. 285 covering the subject parcel of land in dispute:
- Meanwhile, on September 18, [1984],[3] Lucio Arvisu the alleged son of Gaudencio Arvisu and Natalia Ricafrente Arvisu, and substantially all defendants herein filed with the Regional Trial Court, Branch 23, Trece Martires, Cavite, a civil case for 'Annulment of Title, with Reconveyance and Damages' against Salud Arcal Arbolante, Marcelina Arcal (deceased), Maria Arcal, Josefina Arcal and Marciana Arcal which was docketed as Civil Case No. TM-59. Defendants therein, plaintiffs herein, filed their Answer with Compulsory Counterclaim. On May 28, [1985],[4] the said complaint was ordered to be dismissed by the trial court for failure to prosecute. xxx An appeal was made to the Court promulgated on November 28, 1986, said appeal was considered abandoned and dismissed for failure of appellants to file their brief. xxx
- Dissatisfied therefrom, on March 10, 1987, Lucio Ricafrente Arvisu, one of the plaintiffs in the immediately cited Civil Case No. TM-59, filed another case for 'Registration of Claim Under Section 8, RA26', entitled 'Lucio R. Arvisu vs. Marcelina Arcal (deceased), Maria Arcal, Josefina Arcal, Marciana Arcal and the Register of Deeds of Trece Martires City', docketed as Civil Case No. TM-146 before the Regional Trial Court of Branch 23, Trece Martires City. Private respondent therein filed a Motion to Dismiss basically on the ground of lack of cause

of action and res adjudicata. In the Order of the trial court dated July 22, 1988, the complaint filed by Lucio Arvisu was dismissed though he thereafter filed an appeal with the Court of Appeals. xxx;

- With regard to the ejectment suit filed by plaintiffs herein, except Virgilio Arcal, with the Municipal Trial Court of Tanza, Cavite, the said court rendered a favorable judgment in favor of plaintiffs ordering defendants therein among others, to vacate the property in question and remove residential houses and improvements introduced therein and return the possession thereof to plaintiffs. xxx Unfortunately on appeal with the RTC, Branch 23, Trece Martires City, by defendants therein, the foregoing decision was reversed and set aside, and the said complaint for ejectment was dismissed without prejudice to the filing of the proper action after the prejudicial question in Civil Case No. TM-146 is resolved in a fair and adversary proceeding. Said decision attained finality for failure of plaintiffs' former counsel to interpose an appeal. xxx;

- Upon the other hand, the decision in Civil Case No. TM-146 which dismissed the petition of Lucio Arvisu was sustained by the Court of Appeals in its Decision promulgated on October 28, 1994. xxx;

- Several demands were made by plaintiffs for defendants to vacate the premises in question, the last written demand was made by plaintiffs' lawyer on July 23, 1995, but they proved futile as they refused and failed, and still refuse and fail to vacate the premises, to the damage and prejudice of plaintiffs. xxx.

Private respondents failed to file their answer within the reglementary period, prompting petitioners to file a motion to render judgment. In a Decision dated October 26, 1995, the municipal trial court held that petitioners are registered owners of the property and as much they have the right to enjoy possession thereof. The dispositive position of the decision reads:

Wherefore, finding the allegations of the plaintiffs to be with merits (sic), judgment is hereby rendered in favor of the plaintiffs ordering all the defendants xxx:

- To vacate the property in question which they are occupying;
- To remove their residential houses and improvement introduce(d) therein and return the possession of the lot to the plaintiff(s);
- To pay the plaintiffs the sum of P200.00 as monthly rental for the use and occupying (sic) of the property from the date of the demand letter made by the plaintiff(s);
- To pay plaintiffs the sum of P20,000.00 by way of attorneys fees and P3,000.00 as litigation expenses; and
- Ordering the coat of suit.[5]

On appeal, the Regional Trial Court of Cavite, Branch 23, affirmed in toto the municipal trial court's decision.[6]

Private respondents filed a petition for review with the Court of Appeals, arguing inter alia that "the respondent trial court erred in not dismissing the case for lack of jurisdiction, the complaint being one for recovery of right of possession." [7]

The appellate court, ruling in favor of private respondents, granted the petition, reserved and set aside the decision of trial court and dismissed Civil Case No. 370.[8]

In considering that the complaint was not one for unlawful detainer, advertent that private respondents had previously filed complaints questioning petitioner's ownership of the land, the appellate court made the following disquisitions:

In commencing this suit for unlawful detainer private respondents are banking in their allegation that they merely tolerated petitioners to stay on the premises in question, but which tolerance they already withdrew on

July 23, 1995. However, the other allegations and admissions of private respondents in their complaint would show that the case is not one of unlawful detainer as petitioners did not actually occupy the subject property upon the tolerance of private respondents.

First. Herein private respondents, as plaintiffs, filed on June 18, 1984 an ejectment suit against substantially all of herein petitioners, as defendants, also before the MTC of Tanza and this was docketed as Civil Case No. 285. In the case, it was the position of private respondents that for humanitarian consideration they tolerated petitioners to construct their respective houses on the subject premises sometime in 1974. However, this tolerance was withdrawn sometime in 1984 when demands to vacate were made on petitioners by private respondents before the commencement of Civil Case No. 285. Consequently, this present action for unlawful detainer based on the same theory of tolerance has no leg to stand on as in fact the supposed tolerance given by private respondents in 1974 was, as they themselves admit, already withdrawn way back in 1984.

Second. The MTC of Tanza decided Civil Case No. 285 in favor of private respondents. This decision was reversed however on appeal by the RTC of Trece Martires, Branch 23. The RTC's decision then gained finality for failure of private respondents to elevate the case to the property appellate court. Without passing upon the propriety of the decision of both the NTC and RTC in Civil Case No. 285, the admission by private respondents in that case that they withdrew sometime in 1984 the tolerance they supposedly extended to petitioners stands. That is, inasmuch as private respondents admit that they already made a demand to vacate upon petitioners in 1984, they are bound by this demand. And since they pursued this demand with the filing of Civil Case No. 285, no tolerance can be spoken of in this present case. Thus, the written demand to vacate of July 3, 1995 made by private respondents on petitioners did not terminate any right of the latter to stay on the subject premises supposedly founded on tolerance.

Third. As further alleged and admitted by private respondents in their complaint, a certain Lucio R. Arvisu and substantially all of the petitioners filed against them on September 18, 1984 an action for 'Annulment of Title, with Reconveyance and Damages' before the RTC of Trece Martires, Branch 23, docketed therein as Civil Case No. TM-59. Although that case was later dismissed for failure to prosecute, there is no question that its institution constituted an open challenge to the title of private respondents over the premises in dispute. In effect, petitioners never really recognized private respondents as owners thereof. With this position of petitioners which private respondents became aware of with the filing of Civil Case No. TM-59, the former can hardly be considered to have occupied the subject premises by mere tolerance of the latter.

Fourth. On March 10, 1987, Lucio R. Arvisu again commenced a suit for 'Registration of Claim Under Section 8, R.A. 26' also before the RTC of Trece Martires City, Branch 23, docketed as Civil Case No. TM-146. Albeit dismissed later, this case also served as an opposition to private respondents' title over the subject property. Thus, like Civil No. Tm-59, Civil Case No. TM-146 also destroys private respondents' theory of tolerated possession.

We are therefore convinced that the allegations of private respondents in their own complaint do not sufficiently support an action for unlawful detainer. True, the records will show that they are the registered owners of the property in dispute. As much, they have the preferential right to be the possessors thereof. But for this right to be enforced and respected, they will have to avail of the proper remedy provided for by law and the rules.[9]

Hence this petition, where petitioners assigns to the appellate court the following error:

RESPONDENT COURT OF APPEALS ERRED IN FINDING THAT THE COMPLAINT FILED BEFORE THE MUNICIPAL TRIAL COURT OF TANZA, CAVITE, DOES NOT CONSTITUTE AN UNLAWFUL DETAINER SUIT, AND IN DISMISSING THE SAME FOR LACK OF JURISDICTION.[10]

We grant the petition.

The jurisdiction of the court, as well as the nature of the action, are determined by the averment in the complaint.[11] We examine the allegations of the complaint filed by petitioners before the municipal trial court.

To give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint should embody such statement of facts as brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol testimony.[12]

From a reading of the allegations of the complaint quoted above, we find that the action is one for unlawful detainer.

Petitioners alleged in their complaint that they are the registered owners of the subject property. The cases filed by certain Lucio Arvisu and several of the private respondents casting doubt on petitioners' ownership of the property, namely Civil Case No. TM-59 for 'Annulment of Title, with Reconveyance and Damages' and Civil Case No. TM-146 for 'Registration of Claim Under Section 8, R.A No. 26', were resolved with finality adverse to private respondents.[13]

Petitioners also alleged in the complaint that the possession of the property by private respondents was with petitioners' tolerance,[14] and that they (petitioners) had served written demands upon private respondents, the latest demand being on July 23, 1995, but that private respondents refused to vacate the property.[15]

The appellate court, however, made the conclusion that from the allegations in the complaint, it can be gleaned that private respondents "did not actually occupy the subject property upon the tolerance of [petitioners]",[16] as tolerance was withdrawn sometime in 1984 when demands to vacate were made on private respondents prior to the commencement of Civil Case No. 285; therefore, unlawful detainer is not the proper remedy.

We disagree with the appellate court.

The rule is that possession by tolerance is lawful, but such possession becomes unlawful upon demand to vacate made by the owner and the possessor by tolerance refuses to comply with such demand.[17] 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. The status of the possessor is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner. In such case, the unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate.[18]

The filing of the first ejectments case, Civil Case No. 285, in the 1984 signified that petitioners sought the ouster of private respondents from possession of the property. Proceeding in the case were however suspended with the filing of Civil Case No. TM-59 for "Annulment of Title with Reconveyance and Damages" by Lucio Arvisu and several of private respondents.[19] Civil Case No. TM-59 was eventually dismissed and the judgment of dismissal attained finality.[20] The ejectment case was later resolved in favor of petitioners, but on appeal, the case was dismissed on July 6, 1992 "without prejudice to the filing of the proper action after the prejudicial question in Civil Case No. TM-146 [filed by Lucio Arvisu against petitioners following the dismissal of Civil Case No. TM-59] is resolved in a fair and adversary proceeding." [21] Civil Case No. TM-146 which also sought the annulment of petitioners' title to the property, was eventually resolved against private respondents on October 28, 1994.[22]

Because of the pendency of the cases involving ownership, the proceedings in the first ejectment case were suspended. Petitioner could not but await the outcome of these case and preserve the status quo As the Court has stated:

In giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who in fact has actual possession; and in case of controverted right, it requires the parties to preserve the status quo until one or the other of them sees fit invoke the decision of the court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of the dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, where a person supposes himself to be owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction; and he cannot be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right.[23]

The proceedings involving ownership of the subject property took all of ten years. Through all these ten years, petitioners, giving due respect to judicial process, allowed the matter of ownership to be threshed out, without creating any disturbance whatsoever on private respondents' possession.

The complaint alleges that after the termination of the second case filed by Lucio Arvisu in 1994, petitioners sent written demands upon private respondents, the last being on July 23, 1995.[24] The rule is that a complaint for unlawful detainer must be filed within one year from demand, demand being jurisdictional.[25] This one-year period is counted from the last demand[26] Petitioners' letters of demand preceded the filing of the complaint with the municipal trial court on August 31, 1995.

An unlawful detainer suit involves solely the issue of physical or material possession over the property or possession de facto, that is who between the plaintiff and the defendant has a better right to possess the property in question.[27] Where, however, the issue is who has the better and the legal right to possess or to whom possession de jure pertains, accion publiciana in proper.[28] In the case at bar, petitioners' complaint for unlawful detainer was confined to recovery of de facto or physical possession of the property and was resorted to after private respondents has indubitably failed in their suit assailing petitioners' right to ownership.

Notably, inferior courts retain jurisdiction over ejectment cases even if the defendant raises the question of the ownership and the question of possession cannot be resolved without deciding provisionally the issue of ownership.[29] A contrary rule would pave the way for the defendant to trifle with the ejectment suit, which is summary in nature, as he could easily defeat the same through the simple expedient of asserting ownership.[30] Also, the issue of ownership raised in a separate case, such as an accion publiciana or an action for quieting of title,[31] is not prejudicial to an ejectment suit and does not abate the ejectment case.

In *William Auto supply Corporation, et al., vs. Court of Appeals, et al.*, the Court, speaking through Chief Justice Narvasa, enumerated the cases which should not be regarded as prejudicial to an ejectment suit:

- Injunction suits instituted in the RTC by defendants in ejectment actions in the municipal trial courts or other courts of the first level (*Nacorda v. Yatco*, 17 SCRA 920 [1996] do not abate the latter, and neither do proceedings on consignment of rentals (*Lim Si v. Lim*, 98 Phil. 868 [1956], citing *Pue, et al v. Gonzales*, 87 Phil. 81 [1950]).
- An 'accion publiciana' does not suspend an ejectment suit against the plaintiff in the former (*Ramirez v. Bleza*, 106 SCRA 187 [1981]).
- A 'writ of possession case' where ownership is concededly the principal issue before the Regional Trial Court does not preclude nor bar the execution of the judgment in an unlawful detainer suit where the only issue involved is the material possession or possession de facto of the premises (*heirs of F. Guballa, Sr. v. C.A.*, 168 SCRA 139

[1988].

- An action for quieting of title to the property is not a bar to an ejectment suit involving the same property (Quimpo v. de la Victoria, 46 SCRA 139 [1972].

- Suit for specific performance with damages do not affect ejectment actions (e.g., to compel renewal of lease contract) (Desamito v. Cuyegkeng, 18 SCRA 1184 [1966]; Pardo de Tavera v. Encarnacion, 22 SCRA 632 [1968]; Rosales v. CFI, 154 SCRA 153 [1987]; Commander Realty, Inc. v. C.A., 161 SCRA 264 [1988];

- An action for reformation of instrument (e.g. from deed of absolute sale to one of sale with pacto de retro) does not suspend an ejectment suit between the same parties (Judith v. Abragan, 66 SCRA 600 [1975].

- An action for reconveyance of property or ‘accion reivindicatoria’ also has no effect on ejectment suits regarding the same property (Del Rosario v. Jimenez, 8 SCRA 549 Salinas v. Navarro, 126 SCRA 167; De la Cruz v. C.A., 133 SCRA 520 [1963];[1984]; Drilon v. Gaurana, 149 SCRA 352 [1987]; Ching v. Malaya, 153 SCRA 412 [1987]; Philippine Feeds Milling Co., Inc. v. C.A., 174 SCRA 108, Dante v. Sison, 174 SCRA 517 [1989]; Guzman v. C.A., [Annulment of sale and reconveyance], 177 SCRA 604 [1989]; Demamay v. C.A., 186 SCRA 608 [1990]; Leopoldo Sy v. C.A., et al. [annulment of sale and reconveyance], G.R. No. 95818, Aug. 2, 1991.)

- Neither do suits for annulment of sale, or title, or document affecting property operate to abate ejectment actions respecting the same property (Salinas v. Navarro [annulment of deed of sale with assumption of mortgage and/or to declare the same an equitable mortgage], 126 SCRA 167 [1983]; Ang ping v. RTC [annulment of sale of title], 154 SCRA 153 [1987]; Caparros v. C.A. [annulment of title], 170 SCRA 758 (1989); Dante v. Sison [annulment of sale with damages] 174 SCRA 517; Galgala v. Benguet Consolidated, Inc. [annulment of document], 177 SCRA 288 [1989]).

Here, the appellate court conceded that petitioners are the registered owners of the subject property with the preferential right to possession as an attribute of ownership. No other issue is involved in the case, as the question of ownership of the subject property has been judicially settled. Quite simply, the only matter for consideration of the court is the issue of possession de facto.

WHEREFORE, in view of the foregoing, the instant petition is GRANTED. The Decision dated November 15, 1996 and Resolution dated January 13, 1997 of the Court of Appeals in CA-G.R No. 40824 is hereby REVERSED and SET ASIDE. The judgment dated October 26, 1995 of the Municipal Trial Court in Civil Case No. 370 and the judgment dated March 5, 1996 of the Regional Trial Court of Cavite, Branch 23 affirming said disposition of the inferior court are hereby REINSTATED.

Davide, Jr., (Chairman) Bellosillo, and Vitug JJ., concur.

[1] Deceased.

[2] Rollo, pp. 35-38.

[3] Reads 1994 in the complaint, with handwritten correction.

[4] Reads 1995 in the complaint.

[5] Id., at 129-130.

[6] Id., at 159.

[7] Id., at 181.

[8] Id., at 40

[9] Id., at 38-40

[10] Id., at 13.

[11] Sumulong v. Court of Appeals, 232 SCRA 372 (1994); Del Castillo v. Aguinaldo, 212 SCRA 169 (1992); See also Hilario v. Court of Appeals, G.R. No. 121865, August 7, 1996. citing cases.

[12] Sarmiento v. Court of Appeals, 250 SCRA 108 (1995) CITING 36A C.J.S. Forcible Entry & Detainer, Sec. 39, p. 1002 and Ind-Boxley v. Collins, 4 Blackf. 320; Me-Treat v. Brent, 51 Me. 478.

[13] Paragraphs 7 and 10 of the complaint.

[14] Paragraph 1 of the complaint. The rule is that a complaint for unlawful detainer is sufficient if it contains the allegation that the withholding of possession or the refusal to vacate is unlawful, without necessarily employing the terminology of the law. The complaint must aver facts showing that the inferior court has jurisdiction to try the case, such as how defendant's possession started or continued. Hilario v. Court of Appeals, supra citing Sumulong v. Court of Appeals, supra, Deveza v. Montecillo, 27 SCRA 822 (1969).

[15] Paragraph 11 of the complaint.

[16] Rollo, p. 39.

[17] Hilario v. Court of Appeals, supra; Odsigue v. Court of Appeals, 233 SCRA 626 (1994); Pangilinan v. Aguillar, 43 SCRA 136 (1972); Vda. De Prieto v. Reyes 14 SCRA 432 (1965); YU v. De lara, 6 SCRA 786 (1962); Amis v. Aragon; Also Parran v. Court of First Instance of Sorsogon, 10th Judicial District, 125 SCRA 78 (1983).

[18] Calubayan v. Pascual, 21 SCRA 146 (1967).

[19] See CA rollo, p. 61.

[20] Paragraph 7 of the complaint.

[21] Rollo, p. 70.

[22] CA Record, p. 203.

[23] Dizon v. Concina, 30 SCRA 897 (1969), citing Mediran v. Villanueva, 37 Phil. 752; Also Manlapaz v. Court of Appeals, 191 CSRA 795 (1990); Sarmiento v. Court of Appeals, 250, supra.

[24] Paragraph 11 and Annexes "J" to "WW" of the Complaint; See Rollo, pp. 78-117 and 124-128.

[25] Rule 70, Section 1 and 2, Revised Rules of Court.

[26] Development Bank of the Philippines v. Canovoy, 35 SCRA 197 (1970); citing Sy Oh v. Garcia, 28 SCRA 735 (1969) and Calubayan v. Pacual, supra; Sarena v. Villegas, 22 SCRA 1257 (1968).

[27] Del Rosario v. Court of Appeals, 241 SCRA 519 (1995), Times Broadcasting Network, represented by Alex Sy v. Court of Appeals, G.R. No. 122806, June 19, 1997.

[28] Reyes v. Sta Maria, 91 SCRA 164 (1979).

[29] Section 33 (2) of B.P. Blg. 129 reads:

Jurisdiction of Metropolitan Trial Court, Municipal Trial Courts and Municipal Circuit Trial Court in Civil Cases - Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Court shall exercise:

xxx xxx xxx

(2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when in such cases, the defendant raises the question of the ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall resolved only to determine the issue of possession.

Also Section 1, 1983 Revised Rules on Summary Procedure as revised by Supreme Court Resolution dated November 15, 1991.

[30] Hilario v. Court of Appeals, supra.

[31] Wilmon Auto Supply v. Court of Appeals, 208 SCRA 108(1992).

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