

TERESITA DIO, PETITIONER, VS. DRA. ROSALINDA MELO CONCEPCION, RESPONDENT.

G.R. No. 129493. September 25, 1998

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioner urges us to reverse the decision[1] of 31 January 1997 and resolution[2] of 3 June 1997 of the Court of Appeals. The decision affirmed, with modification, the decision of the Regional Trial Court (RTC) of Lucena City, Branch 55, in Civil Case No. 94-153, while the resolution denied petitioner's motion to reconsider the Court of Appeals' decision. In turn, the RTC decision modified the decision of the Municipal Trial Court in Cities (MTCC) of Lucena City, Branch 2, in Civil Case No. 1609-93 in favor of respondent.

The factual and procedural antecedents were summarized by the Court of Appeals in its challenged decision as follows:

(1) Sometime in August 1992, petitioner Teresita Dio and private respondent Rosalinda Concepcion entered into a verbal contract of lease of a parcel of residential land, together with the improvements thereon, located at the corner of Claro M. Recto and Paz Streets, Lucena City, which property was registered in the name of private respondent under Transfer Certificate of Title No. T-49988, and containing an area of 102 square meters, more or less. The parties further agreed that petitioner will construct a two-story structure of light and mixed materials to be used as a garage by private respondent for a monthly rental of P4,000.00, payment of which shall begin from the time the construction is completed.

(2) When the private respondent visited the construction site on 31 August 1992, she saw that the materials being used therein by the petitioner are not of "light and mixed materials" as agreed upon for which reason she ordered the work to be stopped, and offered the amount of P50,000.00 to the private respondent for the expense incurred. The latter refused to accept the offer and, instead, demanded that private respondent shall pay her the amount of P209,614.00 representing the expenses she allegedly incurred when the construction was halted.

(3) When no settlement was reached, private respondent sent a letter of demand to the petitioner for the latter to vacate the premises and remove the structure built therein within 15 days from notice thereof.

(4) Upon petitioner's failure to comply, private respondent, on 10 June 1993, filed an action for unlawful detainer against petitioner before the Municipal Trial Court in Cities (MTCC, for brevity), Branch II, Lucena City, and docketed therein as Civil Case No. 1609-93. Petitioner filed her Answer with Counterclaim dated 23 June 1993.

(5) After the issues were joined, the MTCC issued on 18 November 1993 a pre-trial order containing the facts and issues agreed upon by the parties. Thereafter, the parties submitted their respective position papers and comments thereon, together with the parties' and their witnesses' affidavits.

(6) On 15 April 1994, the MTCC rendered a decision in favor of private respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Dr. Rosalinda Melo Concepcion and against defendant Teresita Dio, ordering said defendant to vacate Lot 2753-C of Lucena Cadastre and deliver possession thereof to plaintiff, and in addition, she is hereby ordered to pay plaintiff the sum of One Thousand Pesos (P1,000.00) as the reasonable monthly rental for the use of the premises from the date of the demand to vacate on April 14, 1993 until position of the premises is turned over to plaintiff. On the counterclaim, plaintiff is hereby ordered to reimburse defendant for the useful improvements existing on the premises equivalent to one-half of the total expense incurred by defendant or the amount of One Hundred Thousand Pesos (P100,000.00) within one (1) month or sooner from notice of this Decision, unless extended on reasonable grounds. Defendant's claim for moral, actual, exemplary damages as well as attorney's fees and expenses of litigation are dismissed for lack of factual and legal basis.

SO ORDERED.

(7) Aggrieved by the verdict, petitioner appealed to the respondent Regional Trial Court of Lucena City, Branch 55 where the appeal was docketed as Civil Case No. 94-153. On 11 November 1994, the respondent court rendered judgment affirming with modification the decision of the MTCC, the decretal portion of which states:

WHEREFORE, in view of the foregoing, the decision of the MTCC, Br. II, Lucena City, is affirmed with modifications, and this Court hereby:

(1) Declares that the lower court has the jurisdiction to try and decide the instant case, and that, there was a perfected lease contract between the plaintiff-appellee and defendant-appellant;

(2) Orders the defendant-appellant Teresita Dio, to immediately vacate and leave the premises, that is Lot No. 2753-C of Lucena Cadastre, covered by TCT No. T-49988;

(3) Orders the defendant-appellant to pay the plaintiff-appellee, Dr. Rosalinda Melo Concepcion, the monthly rental of P4,000.00 from November 1992 up to the time the former actually leave[s] the premises, with legal interest of 6% per annum until the total amount is fully paid;

(4) Orders the defendant-appellant to remove the structure or improvements erected thereat at her own expense or she may retain said structure/improvements without the right to reimbursement from the plaintiff-appellee; and

(5) Orders the defendant-appellant to pay plaintiff-appellee moral damage[s] in the amount of P8,000.00 and P10,000.00 as attorney's fees.

There being no supersedeas bond filed by the defendant-appellant, let this judgment be made executory and the corresponding writ issue immediately.

SO ORDERED.

(8) Thereafter, the petitioner filed a motion for reconsideration of the assailed decision which, however, was denied by the respondent court in its questioned Order dated 10 February 1995.

Hence, this petition for review where petitioner faults the respondent court for committing the following assigned errors:

I

THE RTC GRAVELY ERRED IN HOLDING THAT THE MTC HAS JURISDICTION TO TRY AND DECIDE THE INSTANT CASE.

II

THE RTC GRAVELY ERRED IN DENYING PETITIONER'S SUPPLEMENTAL MOTION TO CONDUCT AN OCULAR INSPECTION OF THE PREMISES.

III

THE RTC GRAVELY ERRED IN CONCLUDING THAT PRIVATE RESPONDENT IS ENTITLED TO POSSESSION OF THE SUBJECT PROPERTY AND THE PAYMENT OF MONTHLY RENTALS, AND IN SO RULING, DECIDED IN A WAY NOT IN ACCORD WITH THE PRINCIPLES LAID DOWN IN GRACE PARK ENGINEERING CO., INC. VS. DIMAPORO, 107 SCRA 266, 272 (1981), AND THE APPLICABLE PROVISIONS OF LAW.

IV

THE RTC OVERLOOKED IF NOT IGNORED MATERIAL AND RELEVANT EVIDENCE AND DECIDED IN A WAY NOT IN ACCORD WITH THE CASE OF MEDIDA VS. COURT OF APPEALS, 208 SCRA 887, 898 [1992] WHEN, WITHOUT ANY APPEAL RAISED BY PRIVATE RESPONDENT, IT NULLIFIED THE DECISION OF THE MTCC ORDERING THE LATTER TO REIMBURSE PETITIONER FOR HER REIMBURSEMENT EXPENSES.

V

THE RTC DISREGARDED MATERIAL AND RELEVANT EVIDENCE WHEN IT FAILED TO AWARD TO PETITIONER MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[3]

The Court of Appeals perceived the basic issue in this wise:

Was the action filed by private respondent before the MTCC of Lucena City essentially for detainer and, therefore, within its exclusive original jurisdiction, or one for rescission of a contract, which should be litigated before the RTC?

In ruling that the action was one for detainer and thus the MTCC had exclusive original jurisdiction over the same, the Court of Appeals held:

The pertinent provisions of the Civil Code explicitly provide that:

"ART. 1659. If the lessor or the lessee should not comply with the obligations set forth in articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force. (1956)."

According to the above provisions, the failure on the part of the lessor or the lessee to comply with his obligation supplies a ground for the rescission of the contract and the recovery of damages against the defaulting party. But contrary to the belief of the petitioner, the remedy of rescission contemplated by the aforequoted article is not an independent action for the rescission of the lease which should normally fall within the exclusive and original jurisdiction of the Regional Trial Court. Indeed, as early as 1929, the Supreme Court had occasion to pass upon this issue where it held that:

"xxx upon non-payment of rent by the lessee (or any violation of the lease contract, for that matter), the lessor may elect to treat the contract as rescinded and thereby determine the right of the lessee to continue in possession; and this right to recover possession may be enforced in an action of unlawful detainer. It is not necessary, in such situation, that an independent action for the rescission of the lease should first be instituted, in the Court of First Instance (now, Regional Trial Court), for the purpose of putting an end to the right of the tenant to remain in possession under the lease." (Vinda [sic] de Pamintuan vs. Tiglao, 53 Phil. 1; emphasis supplied).

The foregoing rule was reiterated by the Supreme Court in subsequent cases where it ruled that "a lessor is not in law required to bring first an action for rescission (for violation of lease contract) but could ask the court to do so and simultaneously seek the ejection of the lessee in a single action for illegal detainer (Dayao vs. Shell Company of the Phil., Ltd., 97 SCRA 497; Lao vs. Suarez, 22 SCRA 215). And under said Article 1659 of the Civil Code, the court has no discretion to refuse rescission, unlike the situation covered by Article 1191 on the

general rules on obligations where the court is authorized to fix a period and to refuse rescission upon the existence of a just cause (*Bacalla vs. Rodriguez, et al.*, C.A. 40 O.G. [supp.], August 30, 1941, p. 65).

Not only that.

A careful reading of the facts disclosed by the records reveals that in filing the complaint, private respondent is primarily concerned with the return of the material possession of the subject property to her. The respondent court's ratiocination upholding the MTCC's assumption of jurisdiction is predicated on the finding that "the complaint and its prayer, and the affidavit of the plaintiff-appellee (herein private respondent), pertinently alleged facts when, how and why she was unlawfully deprived of her possession over the premises of the property in question." Thus, the question of unlawful withholding of the possession of the subject premises was brought to the fore. Understandably, therefore, the respondent court cannot be faulted for upholding the MTCC's taking cognizance of Civil Case No. 1609-93 for ejectment.

Well-settled is the rule that the jurisdiction of the court, as well as the nature of the action, are determined by the allegations in the complaint (*Sumulong vs. Court of Appeals*, 232 SCRA 372; *Del Castillo vs. Aguinaldo, et al.*, 212 SCRA 169).

It is equally settled that in an action for unlawful detainer, an allegation that the defendant is unlawfully withholding possession from the plaintiff is deemed sufficient (*Maddamu vs. Judge of Municipal Court of Manila*, 74 Phil. 230), 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 implying the terminology of the law. (*Pangilinan vs. Aguilar*, 43 SCRA 136).[4]

As to petitioner's right to retain possession of the premises until reimbursed the cost of the improvements she built on the lot, the Court of Appeals found the ruling of the MTCC to be more in accord with law and jurisprudence, and held:

While it may be true that the contractual relationship between the parties is not strictly governed by the laws on lease, we find the provisions of Article 1678 of the Civil Code applicable "inasmuch as when defendant herein (herein petitioner) started building on the lot of plaintiff (herein private respondent), it was in fact with permission and in contemplation or anticipation of a lease agreement and, therefore, defendant was building as a would-be lessee. Nonetheless, only the receipts for expenses for materials thereafter purchased must be deemed incurred at the risk of defendant.[5]

The Court of Appeals then decreed:

IN VIEW OF ALL THE FOREGOING, the assailed decision is hereby affirmed with modifications, and this Court hereby:

1. Declares that the Municipal Trial Court in Cities, Branch II, Lucena City has jurisdiction over Civil Case No. 1609-93;
2. Orders petitioner Teresita Dio to immediately vacate the subject premises, that is Lot 2753-C of Lucena Cadastre covered by TCT No. T-49988;
3. Orders petitioner to pay private respondent the amount of One Thousand Pesos (P1,000.00) as reasonable compensation for the use of the premises from the date of demand to vacate on 14 April 1993 until petitioner actually vacates the premises, with legal interest until the total amount is fully paid;
4. Orders private respondent to reimburse the petitioner the amount equivalent to one-half of the total expenses incurred by the latter for the useful improvements introduced thereon, or the amount of One Hundred Thousand Pesos (P100,000.00) within one month from notice of this decision;
5. Orders petitioner to pay private respondent the sum of P10,000.00 as attorney's fees; and

6. Petitioner's claim for moral, actual and exemplary damages and attorney's fees and expenses for litigation are dismissed for lack of factual and legal basis."

SO ORDERED.[6]

After her motion to reconsider was denied, petitioner filed the instant petition alleging that the Court of Appeals erred in:

I.

FINDING THAT THE MTCC HAD JURISDICTION OVER THE COMPLAINT BELOW SINCE IT WAS ONE FOR UNLAWFUL DETAINER, NOT ONE FOR RESCISSION OF AN ORAL LEASE AGREEMENT;

II.

NOT ORDERING THE TRIAL COURT TO CONDUCT AN OCULAR INSPECTION OF THE LEASED PREMISES;

III.

NOT FINDING THE PETITIONER TO BE ENTITLED TO DAMAGES AND ATTORNEY'S FEES. [7]

The key issue to be resolved is whether the MTCC had jurisdiction over the subject matter of the complaint in Civil Case No. 1609-93 filed by private respondent.

We resolve the issue in the affirmative.

Jurisdiction of a court over a specific case, as well as the nature of the action, is determined by the averments in the complaint,[8] and is not made to depend upon the allegations in the answer or in a motion to dismiss.[9]

It is settled that a complaint for ejectment 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.[10]

There is unlawful detainer when one unlawfully withholds possession of property after the expiration or termination of his right under any contract, express or implied.[11] Unlawful detainer is also proper when a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, fails to vacate the premises upon the owner's demand.[12]

Under Article 1673 of the Civil Code, the lessor may judicially eject the lessee for, among other causes: (1) lack of payment of the price stipulated; or (2) violation of any of the conditions agreed upon in the contract. Previous to the institution of such action, the lessor must make a demand[13] upon the lessee to pay or comply with the conditions of the lease and to vacate the premises. It is the owner's demand for the tenant to vacate the premises and the tenant's refusal to do so which makes unlawful the withholding of possession.[14] Such refusal violates the owner's right of possession[15] giving rise to an action for unlawful detainer.[16]

There was here between petitioner and respondent a perfected verbal contract of lease, with the contract to be reduced to writing later. Among the conditions initially agreed upon were that petitioner, as lessee, was to construct a "two-storey structure of light or mixed materials and private respondent had, therefore, to deliver possession of the land to petitioner; the structure shall be used as garage by petitioner; and the rental was P4,000.00 a month effective upon the completion of the structure."

Respondent subsequently discovered, however, that the structure petitioner constructed was not of light and mixed materials, contrary to their agreement; thus private respondent demanded that the construction be stopped and offered to pay petitioner the sum of P50,000.00 to answer for the cost of the structure. But petitioner, in her counter-offer, claimed that the cost of the structure amounted to P209,614.23. No agreement having been reached,

respondent then formally wrote petitioner a letter of demand to vacate. Since petitioner did not heed respondent's demand, private respondent filed the ejectment suit.

Clearly, ejectment was the appropriate remedy for respondent.

Granting *arguendo* that respondent actually sought rescission of the lease contract as insisted by petitioner, such remedy was not incompatible with unlawful detainer. Rescission of lease contracts under Article 1659 of the Civil Code is not one that requires an independent action, unlike resolution of reciprocal obligations under Article 1191 of said Code.

In *Vda. de Pamintuan v. Tiglao*,^[17] we held:

Upon non-payment of rent by the lessee, the lessor may elect to treat the contract as rescinded and thereby determine the right of the lessee to continue in possession; and this right to recover possession may be enforced in an action of unlawful detainer. It is not necessary, in such situation, that an independent action for the rescission of the lease should first be instituted in the CFI (now RTC), for the purpose of putting an end to the right of the tenant to remain in possession under the lease.

In *Dayao v. Shell Co. of the Philippines, Ltd.*,^[18] we held:

A lessor is not in law required to bring first an action for rescission but could ask the Court to do so and simultaneously (underscoring supplied) seek the ejection of the lessee in a single action for illegal detainer. (citations omitted) When Shell added instances of violation of the contract in its amended complaint, it did so merely in amplification of its action for ejectment.

Petitioner's reliance on *De Leon v. Court of Appeals*^[19] and *Zulueta v. Mariano*^[20] is misplaced. The former concerned agrarian matters and involved issues which "extend(ed) beyond those commonly involved in unlawful detainer suits, such as for instance, the respective rights of parties under various contractual arrangements and the validity thereof." In the latter, principally involved was a violation of the stipulations of an "agreement to sell."

As regards petitioner's contention that an ocular inspection should have been conducted, which the Court of Appeals found unnecessary to pass upon, we find no reversible error on the part of the Court of Appeals. Indeed, since petitioner's main thrust was that the MTCC had no jurisdiction over Civil Case No. 1609-93, then the conduct of an ocular inspection was entirely irrelevant. Besides, the matter of whether or not the structure constructed was actually of light and mixed materials, the avowed purpose of the desired ocular inspection, was not made an issue before the MTCC. At pre-trial, the parties therein only agreed on the following issues:

- a) Whether or not the Court has jurisdiction over the present case, which the defendant contends is properly an action for rescission of contract, and considering that there was no violation by the defendant of the verbal agreement to construct a two-storey structure of light or mixed materials; while plaintiff states the instant action is one for ejectment;
- b) Granting that the Court has jurisdiction, whether or not the plaintiff is entitled to any rental of the premises and how much is the amount thereof; and
- c) Whether or not defendant is entitled to reimbursement of actual and necessary expenses incurred in putting up her structure, the construction of which was stopped by plaintiff.^[21]

Moreover, in her Appeal-Memorandum^[22] submitted to the RTC, petitioner did not assign as error any denial of a motion for ocular inspection.

Anent petitioner's claim for damages and attorney's fees, with this decision being adverse to her, the claim cannot prosper.

Interestingly, respondent prayed in her comment that we modify the assailed decision by deleting that portion thereof ordering her:

[T]o reimburse the petitioner the amount equivalent to one-half of the total expenses incurred by the latter for the useful improvements introduced thereon, or the amount of One Hundred Thousand Pesos (P100,000.00) within one (1) month from notice of this decision.

However, as respondent did not appeal from the decision, it has thus long become final as to her and she is not entitled to any affirmative relief therefrom.[23] This being a civil case, given respondent's failure to appeal, we are precluded from exercising our appellate jurisdiction over her belated claim.

WHEREFORE, the instant petition is DENIED and the challenged decision and resolution of the Court of Appeals are AFFIRMED, with costs against petitioner in all instances.

SO ORDERED.

Bellosillo, Panganiban, and Quisumbing JJ., concur.

Vitug, J., see concurring opinion.

[1] Annex "G" of Petition, Rollo, 118-128, 31 January 1997. Per Galvez, J., with Ramirez and Adefuin-Dela Cruz, JJ., concurring.

[2] Annex "I," Id.; Id., 142-143.

[3] Rollo, 118-122.

[4] Rollo, 123-125.

[5] Id., 126-127.

[6] Rollo, 127-128.

[7] Id., 27.

[8] Lopez v. Northwest, 223 SCRA 469, 475-476 [1993]; Sumulong v. Court of Appeals, 232 SCRA 372, 385 [1994]; Sarmiento v. Court of Appeals, 250 SCRA 108, 114 [1995]; Arcal v. Court of Appeals, G.R. No. 127859, 26 January 1998, at 8.

[9] Lopez v. Northwest, 223 SCRA 469, 475-476 [1993]; Sandel v. Court of Appeals, 262 SCRA 101,110 [1996].

[10] See Pangilinan v. Aguilar, 43 SCRA 136 [1972]; Hilario v. Court of Appeals, 260 SCRA 420, 428-430 [1996]; Javelosa v. Court of Appeals, 265 SCRA 493, 499 [1996]; Feliciano v. Court of Appeals, G.R. No.123293, 5 March 1998, at 7.

[11] See De Leon v. Court of Appeals, 245 SCRA 166,173 [1995]; Refugia v. Court of Appeals, 258 SCRA 347, 369 [1996].

[12] Pangilinan v. Aguilar, supra note 10 at 143; Vda. De Catchuela v. Francisco, 98 SCRA 172 [1980]; Sumulong v. Court of Appeals, supra note 8 at 386; See Dakudao v. Consolacion, 122 SCRA 877, 883 [1983]; See also Peran v. Presiding Judge, Branch II, CFI of Sorsogon, 125 SCRA 78 [1983];

[13] Sec. 2, Rule 70, 1997 Rules of Civil Procedure, formerly, Sec. 2, Rule 70, Rules of Court.

[14] See Casilan v. Tomassi, 10 SCRA 261, 267 [1964].

[15] Id., 264, citing *Canaynay v. Sarmiento*, 79 Phil. 36 [1947]; *Rickards v. Gonzales*, G.R. L-14339, 26 September 1960; *Robles v. San Jose*, 52 O.G. 6193.

[16] *Labastida v. Court of Appeals*, G.R. No. 110174, 20 March 1998, at 8.

[17] 53 Phil. 1, 4 [1929].

[18] 97 SCRA 407, 416 [1980].

[19] 245 SCRA 166, 175 [1995].

[20] 111 SCRA 206, 211 [1982].

[21] Annex "C" of Petition, Rollo, 55.

[22] Annex "E" of Petition, Rollo, 64 et seq.

[23] See *Borillo v. Court of Appeals*, 209 SCRA 130, 140 [1992], cited by petitioner in her Reply. For a discussion of Article 1678 in relation to Article 448, Civil Code, see *Geminiano v. Court of Appeals*, 259 SCRA 344, 351-353 [1996].

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