HERNANDO GENER, PETITIONER, VS. GREGORIO DE LEON AND ZENAIDA FAUSTINO, RESPONDENTS.

G.R. No. 130730. October 19, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals dated May 30, 1997 in CA-G.R. SP No. 37346 reversing the Decision[2] dated April 3, 1995 of the Regional Trial Court of Malolos, Bulacan, Branch 11 in Civil Case No. 370-M-93 which set aside the Decision[3] dated February 19, 1993 of the Municipal Trial Court of Norzagaray, Bulacan in a forcible entry case filed by respondents spouses Gregorio de Leon and Zenaida Faustino against petitioner Hernando Gener.

The forcible entry case was initiated on April 30, 1990 before the Municipal Trial Court of Norzagaray, Bulacan. The respondents, as plaintiffs therein, alleged that they are the original claimants and actual possessors in good faith under a bona fide claim of ownership of a parcel of agricultural land situated at Poblacion, Norzagaray, Bulacan with an area of approximately Four Thousand Four Hundred Four (4,404) square meters. The said parcel of land and the adjoining lots on the north and south thereof were originally part of the course or bed of the Angat River which was formerly adjacent thereto and the boundary on the east or north-east of Lot No. 1050, Cad-350, plan Ap-03-003056, covered by Original Certificate of Title No. 0-1208 (M) of respondent Gregorio de Leon.[4]

During the big flood in 1978, the Angat River allegedly changed its course by moving more than one hundred (100) meters far to the east or north-east, leaving its former course or bed along the eastern or north-eastern boundary of Lot No. 1050 which is elevated so that the said lot dried up. Then, the respondents extended their occupation and cultivation to this elevated and dried up land, planting and cultivating thereon coconuts, bananas and vegetables until May 8, 1989 when petitioner allegedly through force, threat and intimidation, unlawfully entered the property and deprived respondents of the possession thereof, removing the barbed wire fence placed by respondents on the northern boundary of the land in dispute and transferred it to the eastern boundary. Since demands to vacate fell on deaf ears and subsequent efforts toward amicably settling the dispute through the Barangay Justice System proved futile, respondents instituted the complaint for forcible entry against the petitioner.[5]

Petitioner, as defendant in the ejectment case, denied the material allegations of the complaint. Instead, he alleged that he is the real owner and lawful and actual possessor of the land in dispute evidenced by a notarized deed of sale executed on October 10, 1988 by Benjamin Joaquin, heir of the previous owner, Proceso Joaquin. Upon acquisition of the land in dispute, he immediately caused the declaration of the land for taxation purposes in the Office of the Municipal Assessor of Norzagaray, Bulacan and paid realty taxes thereon. Further, he claimed that the land is a private land which was previously owned by Proceso Joaquin and that the said fact is admitted and recognized by Gorgonio de Leon, the late father and predecessor-in-interest of respondent Gregorio de Leon, in an affidavit he executed on November 13, 1961 in which he mentioned Proceso Joaquin as a neighboring landowner in the east of his land.

Petitioner further averred that it was respondents who forcibly entered his lot in question as evidenced by two (2) criminal cases which petitioner filed, namely, (a) Criminal Case No. 3998 for malicious mischief against Rosendo Buen and Ignacio Cadungcol alias Lolong, two (2) alleged helpers of the land of Gregorio de Leon, who allegedly entered the disputed land on October 24, 1988 and destroyed coconut trees, papaya and langka trees which belonged to petitioner, and (b) Criminal Case No. 4043 against Hugo de Leon and Rolly de Leon, brothers of Gregorio de Leon, who allegedly entered the disputed land on March 12, 1989 and destroyed mango trees and other plants belonging to the petitioner Gener. Thus, considering that his occupation of the land in dispute allegedly started on October 10, 1988, the Municipal Trial Court has no jurisdiction over the action since the forcible entry suit filed by respondents was filed beyond the one year period.[6]

Thereafter, trial ensued with Ignacio Cadungol, Teodoro Mendoza, Andres Palad, Balagtas P. San Pedro, Marcelino Samson, Norman Maclang and respondent Zenaida Faustino testifying for the plaintiffs (respondents herein) in the ejectment case, while petitioner Gener was the sole witness for his defense. The Municipal Trial Court condensed their respective testimonies in this manner:[7]

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> For the plaintiffs, Ignacio Cadungol testified that he is a helper, caretaker and overseer of plaintiffs in their lot in Sitio Pulo, Barangay Tabtab, Norzagaray, Bulacan, for the last twenty (20) years; that the lot he is working on as an overseer is bounded on the western portion previously by a river, the northern portion by Andres Palad, southern portion by the property of Miguel Sarmiento and on the eastern portion by Uyong Sison; he does not know a person by the name of Proceso nor Benjamin Joaquin but knows defendant Hernando Gener as the one who is occupying a neighboring lot having planted his lot with coconut, langka, mango trees and who has a house in his occupied lot consisting of galvanized iron and hollow blocks, a fact he knew they being neighbors for five (5) years; the lot of Hernando Gener is fifty (50) meters away from the farm of which he is an overseer; he started occupancy of the lot even during the lifetime of Gorgonio de Leon, father of Gregorio de Leon, one of the plaintiffs; that the western portion subject matter of this case prior to the time it submerged was previously occupied by "Sendo" a relative of Gorgonio de Leon and after the big flood occasioned by typhoon "Dading" in 1978 re-surfaced and was continued to be possessed by Gregorio de Leon and is now declared for taxation purposes in his name but which is now and since 1989 being physically possessed by Hernando Gener and had planted langka trees which are now four (4) feet in height; that Hernando Gener destroyed the banana trees which he planted by Rolly Gener running them over with his jeep on the pretext that he would just pass by but had instead caused them to be planted with banana trees and other improvements which fact he reported to the owner Gregorio de Leon and Zenaida Faustino and for which he had been scolded.
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> Thereafter, in the meanwhile, in the absence of the defendant who is still abroad, the parties through counsels agreed to present another plaintiffs' witness in the person of Teodoro Mendoza, who in brief testified knowing plaintiffs and defendant, the latter being the husband of his grand-daughter; that he farmed a tomana near the tomana being then farmed by Gorgonio de Leon during his lifetime even before Pre-War and upon his death, Gregorio de Leon took possession by introducing improvements like coconut and mango trees; that he saw Hernando Gener in the lot being litigated only in the year 1990.
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> Likewise for the plaintiffs, Andres Palad, 70 years of age, testified merely to corroborate Teodoro Mendoza's testimonies that the De Leon father and son had long been in occupation of Lot No. 1050 and that Hernando Gener's lot is adjacent only to that of Gorgonio de Leon.
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> Zenaida Faustino de Leon, plaintiff, testified that she and her husband had actually been in possession of the land subject matter of this case since she got married to Gregorio de Leon in 1950 as well as their titled lot;

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that she has a Sketch Plan as surveyed by Delfin Bumanglag, Geodetic Engineer (Exh. "C") where they introduced improvements like banana, coconut trees, kaimito, papaya and langka trees; that they were informed by their overseer Ignacio Cadungol in Marikina, Metro Manila that Rolly Gener, son of the defendant and who is even her cousin, destroyed the banana plants and that Rolly Gener would replace them with new ones but claimed ownership instead and fenced the premises; that the land is declared in their name under Tax Declaration No. 13621 (Exh. "K") and under Property Index No. 020-13-001-04-037 (Exh."I") and had paid taxes therefor (Exh. "J")..

Another witness, Balagtas P. San Pedro, Tax Mapper Supervisor of the Provincial Assessor's Office, Malolos, Bulacan, testified that per their record and in accordance with their Sketch Plan (Exh. "M") prepared by the Municipal Assessor's Office prepared by their personnel, the property adjoining Lot No. 1050 with an area of 4,404 square meters is owned by plaintiffs Gregorio de Leon and Zenaida Faustino.

On cross examination, witness admitted that she is not in a position to know who is the actual possessor of the property but issued that only to determine the tax due and assessment thereon; that she is not involved in the issuance and preparation of the tax declaration.

Marcelino Samson, Municipal Draftsman of the Municipal Assessor's Office and Norma Maclang, Local Assessment Officer IV, Malolos Bulacan, dwelt mainly on the circumstances that are in amplification of how the tax declaration and sketch plan were prepared.

For his defense, Hernando Gener declared that he did not forcibly enter plaintiffs' lot on October 10, 1988 as alleged in the complaint but it is the plaintiffs who forcibly entered his lot which he bought from Benjamin Joaquin, son of Proceso Joaquin, as evidenced by a Deed of Sale executed before Judge Filomeno Pascual (Exh. "I") after which he cleared (hinawan) and planted mangoes, bananas, camias and other plants; that the land he bought had not been possessed by Gregorio de Leon and Zenaida Faustino as they are residing at Santos St., Norzagaray, Bulacan, which is five hundred (500) meters away from the lot he bought. After buying the property, Ignacio Cadungol together with others entered the property so he filed Criminal Case No. 4043 also before this Court (Exh. "E"). Thereafter, he caused the land to be declared under Tax Declaration No. 13400 (Exh. "2") and paid taxes for the same (Exh. "3"): that Tax Declaration No. 1512 (Exh. "5") for Gorgonio de Leon which he secured at the Municipal Assessor's Office even showed Proceso Joaquin, father of Benjamin Joaquin, as boundary owner of the small portion on the east and abutting to that of Agapito Gener and Sinforosa Torres. For the current year, he had paid taxes under Official Receipt No. 0023591 (Exh. "3-B"). That in fact, in the "Salaysay" dated November 13, 1961 executed before Atty. Raymundo R. Cruz, (Exh. "8") Gorgonio de Leon, father of the plaintiffs, admitted Joaquin as one of his boundary owners; that for the filing of this case, he suffered damages and other ordeals of litigation as well as attorney's fees.

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After weighing the conflicting evidence, the Municipal Trial Court of Norzagaray, Bulacan rendered judgment[8] dated February 19, 1993, the dispositive portion of which reads:

PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiffs and against the defendant, ordering:

- the defendant and/or all persons claiming right under him to vacate the portion described in Tax Declaration No. ARP-4675 and described in the Sketch Plan marked as Exhibit "M";

- the defendant to pay the plaintiffs P1,000.00 as litigation expenses;

- the defendant to pay plaintiff P2,000.00 as attorney's fees;

All other plaintiffs' claim are denied for lack of merit.

SO ORDERED.

On appeal to the Regional Trial Court (RTC) of Malolos, Bulacan, on April 3, 1995, the said court rendered a decision reversing the decision of the Municipal Trial Court of Norzagaray, and thereby dismissed herein respondents' complaint for forcible entry.[9] In its decision, the Regional Trial Court sustained petitioner's claim of ownership of the property in dispute by virtue of having bought such property from the heir of the former owner thereof. The Regional Trial Court also declared that petitioner has been in possession of the disputed property since October 10, 1988.

Insisting on the validity of their cause, respondents interposed a petition for review with the Court of Appeals which reversed the decision of the Regional Trial Court and reinstated the decision of the Municipal Trial Court.[10] Petitioner's motion for reconsideration was denied by the Court of Appeals in its Resolution promulgated on September 16, 1997.[11] Hence, the instant petition for review before this Court anchored on twelve (12) assignment of errors, to wit:[12]

- THE HONORABLE COURT OF APPEALS ERRED IN GRAVE ABUSE OF DISCRETION IN NOT DISMISSING THE CASE IN VIEW OF THE FAILURE OF THE RESPONDENTS TO ALLEGE IN THE COMPLAINT PRIOR POSSESSION OF THE LAND IN QUESTION;

- THE HONORABLE COURT OF APPEALS ERRED IN GRAVE ABUSE OF DISCRETION IN NOT HOLDING THAT RESPONDENTS' COMPLAINT FOR FORCIBLE ENTRY FILED BEFORE THE MUNICIPAL TRIAL COURT OF NORZAGARAY, BULACAN (ANNEX "K") WAS FILED BEYOND THE ONE-YEAR REGLEMENTARY PERIOD.

- THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING RESPONDENTS GUILTY OF LACHES ASSUMING ARGUENDO THAT THE CASE WAS FILED WITHIN THE PRESCRIBED PERIOD.

- THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN DISREGARDING AND/OR MISAPPREHENDING FACTS OF VALUE AND SUBSTANCE WHICH IF CONSIDERED WOULD HAVE ALTERED THE RESULT OF ITS JUDGMENT, SUCH AS (1) THE FILING OF CRIMINAL COMPLAINT FOR MALICIOUS MISCHIEF AGAINST ROSENDO BUEN AND IGNACION CADUNGOL FOR HAVING ENTERED THE LAND OWNED AND POSSESSED BY THE PETITIONER AND DESTROYED PLANTS THEREIN ON OCTOBER 24, 1988 NEGATING RESPONDENTS' CLAIM THAT PETITIONER ENTERED THE SAME ON MAY 8, 1989 THROUGH FORCE, THREAT AND INTIMIDATION; (2) THE ENTRY INTO THE LAND FOR THE SECOND TIME AND DESTRUCTION OF THE BARBED WIRE AND PLANTS BY HUGO AND ROLLY DE LEON, BROTHERS OF RESPONDENT GREGORIO DE LEON AND IGNACIO CADUNGOL AND OTHERS, ON MARCH 12, 1989 AT 2:00 O'CLOCK P.M.

- THE HONORABLE COURT OF APPEALS ERRED IN GRAVE ABUSE OF DISCRETION DISREGARDING THE JOINT AFFIDAVIT OF ADRIANO DE GUZMAN, GORGONIO DE LEON, AND GREGORIO SISON DECLARING AND RECOGNIZING PROCESO JOAQUIN AS A BOUNDARY OWNER ON THE SOUTH ALONG WITH GORGONIO DE LEON, OF THE LAND WHICH ADRIANO DE GUZMAN SOLD TO PETITIONER, AS A DECLARATION AGAINST INTEREST UNDER SEC. 28 OF RULE 130 OF THE RULES OF COURT AND BINDING UPON RESPONDENTS AS ADMISSION BY PRIVIES UNDER SEC. 31 OF THE SAME RULE.

- THAT THE HONORABLE COURT OF APPEALS ERRED IN GRAVE ABUSE OF DISCRETION IN HOLDING THAT IT WAS UNCLEAR WHETHER THE DISPUTED PROPERTY FORMED PART OF THE PURCHASE PACKAGE, MEANING THE SALE OF ADRIANO DE GUZMAN'S LAND TO PETITIONER HERNANDO GENER, WHICH FINDING IS OBVIOUSLY GROUNDED ENTIRELY ON

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SPECULATION, SURMISES AND CONJECTURES NECESSITATING THE EXERCISE OF THE POWER OF REVIEW BY THE HONORABLE SUPREME COURT.

- THE HONORABLE COURT OF APPEALS ERRED IN GRAVE ABUSE OF DISCRETION IN FINDING THAT PETITIONER "WAS NOT THE INITIAL OCCUPANT OF THE CONTESTED LOT, THE SAME BEING THEN IN THE POSSESSION OF PETITIONERS (NOW RESPONDENTS) WHOSE PRESENCE THEREAT DATES BACK TO 1978, WITHOUT CITATION OF SPECIFIC EVIDENCE ON WHICH THEY ARE BASED. AGAIN, SAID FINDING IS BASED ON CONJECTURES AND SURMISES.

- THE HONORABLE COURT OF APPEALS ERRED IN GRAVE ABUSE OF DISCRETION IN FINDING THAT PETITIONER FORCIBLY EXCLUDED RESPONDENTS FROM THE LOT IN QUESTION WITH THE OUSTING FORCE COMING IN THE FORM OF MAN AND MACHINE. PETITIONER'S SON ROLLY GENER AND HIS RAMMING JEEP, WHICH FINDING IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

- THE HONORABLE COURT OF APPEALS AGAIN ERRED IN GRAVE ABUSE OF DISCRETION IN FINDING THAT THE REGIONAL TRIAL COURT OF BULACAN, BRANCH 11 TREATED THIS CASE AS AN ACCION PUBLICIANA TO DETERMINE WHO BETWEEN THE PARTIES HAD THE BETTER RIGHT TO POSSESSION WHICH HOLDING IS ERRONEOUS AS THE RTC OF BULACAN MERELY HELD THAT PETITIONER HAD SHOWN BY CLEAR AND CONCRETE EVIDENCE THAT "HE IS IN POSSESSION OF THE DISPUTED PROPERTY SINCE OCTOBER 10, 1988."

- THE HONORABLE COURT OF APPEALS ERRED IN GRAVE ABUSE OF DISCRETION IN DISREGARDING THE OVERWHELMING EVIDENCE SHOWING PREPONDERANTLY THAT PETITIONER DID IN FACT AND IN TRUTH START OCCUPYING THE LOT IN QUESTION ON OCTOBER 10, 1988 BY ENCLOSING IT WITH BARBED WIRE AND PLANTING THE SAME TO COCONUTS, MANGOES, LANGKA, BANANAS, ETC.

- THE HONORABLE COURT OF APPEALS ERRED IN GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT OF BULACAN DATED APRIL 3, 1995, AND UPHOLDING THE QUESTIONABLE DECISION RENDERED ON FEBRUARY 19, 1993 BY THE MUNICIPAL TRIAL COURT PRESIDED BY JUDGE BASA.

- THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE MUNICIPAL TRIAL COURT OF NORZAGARAY, BULACAN SHOULD HAVE TAKEN JUDICIAL NOTICE OF THE PENDENCY OF CRIMINAL CASE NUMBER 3998 FOR MALICIOUS MISCHIEF AGAINST ROSENDO BUEN AND IGNACIO CADUNGOL FILED BY P/SGT. JOSE S. SISON, OFFICER-IN-CHARGE OF THE NORZAGARAY POLICE STATION FOR ENTERING THE LOT IN QUESTION ON OCTOBER 24, 1988 AT 9:00 P.M. AND DESTROYED THE BARBED WIRE FENCE AND SOME OF THE PLANTS BELONGING TO PETITIONER HERNANDO P. GENER (EXHIBIT 6).

All the foregoing issues raised by the petitioner essentially question the factual findings of the appellate court as appearing in its assailed decision, contending that such findings do not have any factual moorings. He avers that the appellate court disregarded evidence showing his prior possession of the disputed property which negate the alleged cause of action of the respondents for petitioner's ejectment.

In petitions for review on certiorari, the jurisdiction of the Supreme Court in cases brought before it from the Court of Appeals is limited to reviewing questions of law.[13] For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them.[14] Thus, the findings of fact of the appellate court are generally conclusive on this Court which is not a trier of facts. Although if said factual findings do not conform to the evidence on record, this Court will not hesitate to review and reverse the factual findings of the lower courts.[15] In the instant case, we find sufficient basis to deviate from the rule

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since the extant evidence and prevailing law support a finding different from the conclusion of the appellate court.

It bears stress that in ejectment cases, the only issue for resolution is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants. Anyone of them who can prove prior possession de facto may recover such possession even from the owner himself.[16] Ejectment does not depend on title for relief; the criterion is the right to possession.[17] Thus, priority in time should be the pivotal point in resolving the issue of possession.

Section 1, Rule 70 of the Revised Rules of Court[18] requires that in actions for forcible entry the plaintiff is allegedly deprived of the possession of land or building by force, intimidation, threat, strategy, or stealth and that the action shall be filed within one year from the time of such unlawful deprivation of possession. This requirement implies that the possession of the disputed land by the defendant is unlawful from the beginning as he acquired possession thereof by unlawful means. The plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant. The one year period within which to bring an action for forcible entry is generally counted from the date of actual entry by the defendant on the land.[19]

To support their allegation of prior possession, herein respondents, as plaintiffs in the ejectment case, primarily relied upon the testimonies of Ignacio Cadungol, Teodoro Mendoza, Andres Palad, Balagtas P. San Pedro, Marcelino Samson, Norman Maclang and respondent Zenaida Faustino. The appellate court made much of the testimony that it was petitioner who forcibly excluded respondents from possession of the land on May 8, 1989. In the words of the appellate court, the "ousting force came in the form of man and machine: [petitioner's] son Rolly Gener and his ramming jeep."

However, the Municipal Trial Court and Court of Appeals totally overlooked the fact that while petitioner was his own sole witness, his testimony of prior possession was substantiated by several documentary evidence,[20] which were quite damaging to the existence of respondents' alleged cause of action for forcible entry. This Court noted that there were two (2) incidents that occurred on October 24, 1988 and March 12, 1989 which resulted in the institution by herein petitioner of criminal complaints for malicious mischief.

These two (2) incidents, are the subject of: (a) Criminal Case No. 3998 for malicious mischief against Rosendo Buen and Ignacio Cadungol alias Lolong, two (2) alleged helpers of the land of respondent Gregorio de Leon, who allegedly entered the disputed land on October 24, 1988 and destroyed coconut trees, papaya and langka trees which allegedly belonged to the petitioner, and (b) Criminal Case No. 4043 against Hugo de Leon and Rolly de Leon, brothers of respondent Gregorio de Leon, who allegedly entered the disputed land on March 12, 1989 and destroyed mango trees and other plants which allegedly belonged to the petitioner. These twin incidents, evidenced by "Sinumpaang Salaysay" and Complaint[21] show that prior to May 8, 1989, the alleged date of forcible entry of petitioner, petitioner was already in possession of the disputed land.

As against the mere testimonial evidence relied upon by respondents that they were forcibly ejected from the land by petitioner on May 8, 1989, the documentary evidence of petitioner's prior possession, more particularly the evidence of the two (2) incidents of October 24, 1988 and March 12, 1989, must prevail. Oral testimony, depending as it does exclusively on human memory, is not as reliable as written or documentary evidence,[22] especially when said documentary evidence is not opposed. As Judge Limkin of Georgia once said, "I would rather trust the smallest slip of paper for truth than the strongest and most retentive memory ever bestowed on mortal man."[23]

The Municipal Trial Court of Norzagaray should have taken judicial notice of the said criminal cases involving the subject parcel of land and pending in its docket. While, as a general rule, courts are not authorized to take

judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge,[24] this rule is subject to the exception that "in the absence of objection and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of the case filed in its archives as read into the records of a case pending before it, when with the knowledge of the opposing party, reference is made to it, by name and number or in some other manner by which it is sufficiently designated."[25] Respondents did not impugn nor object to the evidence of petitioner on the existence of the said criminal cases of malicious mischief that sprung from the alleged forcible entry of petitioner's alleged property. Thus, the said Municipal Trial Court should have taken judicial notice of these facts in resolving the issue of prior possession.

In view of the evidence on the possession of petitioner prior to May 8, 1989, as shown by the incidents on October 24, 1988 and March 12, 1989, the cause of action of respondents for forcible entry against the petitioner has already prescribed when they filed the complaint for ejectment on April 30, 1990. Because forcible entry cases must be filed within one year from the date of actual entry on the land.[26] Forcible entry is a quieting process and the one year time bar to the ejectment suit is in pursuance of the summary nature of the action.[27] After the lapse of the one year period, the remedies of the party dispossessed of a parcel of land is to file either an accion publiciana which is a plenary action to recover the right of possession or an accion reinvindicatoria which is an action to recover ownership as well as for the recovery of possession.[28] Consequently, since respondent's cause of action for forcible entry has prescribed, the Municipal Trial Court was without jurisdiction to hear and decide the subject ejectment case.

In view of the conclusions we have thus reached, it is unnecessary to pass upon the other issues raised in the petition.

WHEREFORE, the instant petition is hereby GRANTED. The challenged Decision of the Court of Appeals dated May 30, 1997 in CA-G.R. SP No. 37346 is REVERSED and SET ASIDE. The complaint for forcible entry is DISMISSED without prejudice to the filing of the appropriate action in the Regional Trial Court of Bulacan. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena., JJ., concur.

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[1] Penned by Associate Justice Cancio C. Garcia and concurred in by Associate Justices Delilah Vidallon-Magtolis and Artemio G. Tuquero, Fifteenth Division, in CA G.R. SP No. 37346, Rollo, pp. 23-32.

[2] Penned by Judge Basilio R. Gabo, Jr, in Civil Case No. 370-M-93, Rollo, pp. 66-68.

[3] Penned by Judge Romulo C. Basa, in Civil Case No. 612, Rollo, pp. 59-65.

[4] Rollo, pp. 43-47.

[5] Id.

[6] Rollo, pp. 48-51.

[7] Rollo, pp. 60-63.

[8] Rollo, pp. 59-65.

[9] Rollo, pp. 66-68.

[10] Rollo, pp. 23-32.

[11] Rollo, p. 33.

[12] Rollo, pp. 12-13.

[13] Section 1, Rule 45, 1997 Rules of Civil Procedure.

[14] China Road and Bridge Corporation v. Court of Appeals, G.R. No. 137898, December 15, 2000, p. 7; Philippine National Bank v. Court of Appeals, 337 SCRA 381 (2000).

[15] Thermochem, Inc. v. Naval, G.R. No. 131541, October 20, 2000, p. 5; Borlongan v. Madrideo, 323 SCRA 248, 255 [2000]; Alipoon v. Court of Appeals, 305 SCRA 118, 126-127 [1999].

[16] Diu v. Ibajan, 322 SCRA 452, 458 [2000]; Ceremonia v. Court of Appeals, 314 SCRA 731, 736 [1999]; Gachon v. Devera, Jr., 274 SCRA 540, 552 [1997]; German Management & Services, Inc. v. Court of Appeals, 177 SCRA 495, 499 [1989].

[17] First Nat'l Bank v. Socony Mobil Oil Co. (Mo) 495 SW2d 424, 25 Am Jur 2d, Ejectment §6.

[18] Now the 1997 Rules of Civil Procedure.

[19] Sps. Pedro Ong and Veronica Ong v. Socorro Parel and Hon. Court of Appeals, G.R. No. 143173, March 28, 2001, pp. 6-7.

[20] Rollo, pp. 52-58.

[21] Rollo, pp. 40-42.

[22] Abapo v. Court of Appeals, 327 SCRA 180, 188 [2000]; Abella v. Court of Appeals, 257, 482, 487 [1996]; De Leon v. Court of Appeals, 205 SCRA 612, 622 [1992].

[23] Miller v. Cotton, 5 Ga. 341, 349.

[24] Section 3 of Rule 129 of the Revised Rules of Court.

[25] People of the Philippines v. Hernandez, 260 SCRA 25, 41 [1996]; U.S. v. Claveria, 29 Phil. 527, 532 [1915].

[26] Section 1 of Rule 70, Revised Rules of Court; Article 1147, Civil Code of the Philippines.

[27] De Guzman v. Court of Appeals, 271 SCRA 728, 732 [1997].

[28] Serdoncillo v. Benolirao, 297 SCRA 448, 459 [1998]; De Leon v. Court of Appeals (Special Second Division), 245 SCRA 166, 173 [1995].

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