SPOUSES BONIFACIO R. VALDEZ, JR. AND VENIDA M. VALDEZ, PETITIONERS, VS. HON. COURT OF APPEALS, SPOUSES GABRIEL FABELLA AND FRANCISCA FABELLA, RESPONDENTS.

G.R. NO. 132424. May 04, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This petition for review under Rule 45 of the Rules of Court, filed by petitioners spouses Bonifacio R. Valdez, Jr. and Venida M. Valdez, seeks to nullify and set aside the 22 April 1997 decision[1] and 30 January 1998 resolution of the Court of Appeals in CA-G.R. SP No. 43492, which reversed the judgment, dated 8 January 1997, of the Regional Trial Court of Antipolo, Rizal, Branch 74, in Civil Case No. 3607, which, in turn, affirmed in toto the decision rendered by the Municipal Trial Court of Antipolo, Rizal, Branch II, in Civil Case No. 2547.

This case originated from a complaint for unlawful detainer filed by petitioners Bonifacio and Venida Valdez against private respondents Gabriel and Francisca Fabella before the Municipal Trial Court of Antipolo, Rizal. The complaint alleges these material facts:

> - That plaintiffs are the registered owner[s] of a piece of residential lot denominated as Lot [N]o. 3 Blk 19 located at Carolina Executive Village, Brgy. Sta. Cruz, Antipolo, Rizal which [they] acquired from Carolina Realty, Inc. Sometime [i]n November 1992 by virtue of Sales Contract, xerox copy of which is hereto attached marked as Annex "A" and the xerox copy of the Torrens Certificate of Title in her name marked as Annex "B";
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> - That defendants, without any color of title whatsoever occupie[d] the said lot by building their house in the said lot thereby depriving the herein plaintiffs rightful possession thereof;
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> - That for several times, plaintiffs orally asked the herein defendants to peacefully surrender the premises to them, but the latter stubbornly refused to vacate the lot they unlawfully occupied;
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> - That despite plaintiffs' referral of the matter to the Barangay, defendants still refused to heed the plea of the former to surrender the lot peacefully;
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> - That because of the unfounded refusal of the herein defendants to settle the case amicably, the Barangay Captain was forced to issue the necessary Certification to File Action in favor of the herein plaintiffs in order that the necessary cause of action be taken before the proper court, xerox copy of which is hereto attached marked as Annex "C";
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> - That by reason of the deliberate, malicious and unfounded refusal of the defendants to vacate/surrender the premises in question, the herein plaintiffs were constrained to engage the professional services of counsel thus incurring expenses amounting to TEN THOUSAND PESOS (P10,000.00) representing acceptance fee and additional ONE THOUSAND PESOS (P1,000.00) per appearance, who on July 12, 1994 sent a formal demand was likewise ignored, (sic) copy of which is hereto attached as Annex "D";
>
> - That likewise by virtue of the adamant refusal of the defendants to vacate/surrender the said premises in question, plaintiff[s] suffered serious anxiety, sleepless nights, mental torture and moral erosion; x x x[2]

In their answer, private respondents contended that the complaint failed to state that petitioners had prior physical possession of the property or that they were the lessors of the former. In the alternative, private respondents claimed ownership over the land on the ground that they had been in open, continuous, and adverse possession thereof for more than thirty years, as attested by an ocular inspection report from the Department of Environment and Natural Resources. They also stressed that the complaint failed to comply with Supreme Court Circular No. 28-91 regarding affidavits against non-forum shopping.

The Municipal Trial Court (MTC) rendered a decision in favor of the petitioners, ordering private respondents to vacate the property and to pay rent for the use and occupation of the same plus attorney's fees.

Private respondents appealed the MTC's decision to the Regional Trial Court (RTC). The RTC, in a decision dated 8 January 1997, affirmed in toto the decision of the MTC.

Undeterred, the private respondents filed a petition for review with the Court of Appeals on 10 March 1997 questioning the decision of the RTC.

In a decision dated 22 April 1997, the Court of Appeals reversed and set aside the decision of the RTC. It held that petitioners failed to make a case for unlawful detainer because they failed to show that they had given the private respondents the right to occupy the premises or that they had tolerated private respondents' possession of the same, which is a requirement in unlawful detainer cases. It added that the allegations in petitioners' complaint lack jurisdictional elements for forcible entry which requires an allegation of prior material possession. The Court of Appeals ratiocinated thus:

> An examination of the complaint reveals that key jurisdictional allegations that will support an action for ejectment are conspicuously lacking. In particular, an allegation of prior material possession is mandatory in forcible entry, xxx and the complaint is deficient in this respect. On the other hand, neither does there appear to be a case of unlawful detainer, since the private respondents failed to show that they had given the petitioners the right to occupy the premises, which right has now [been] extinguished.
>
> xxx
>
> In light of the foregoing, the conclusion is inevitable that the Municipal Trial Court before which the action for ejectment was filed had no jurisdiction over the case. Consequently, the dismissal thereof is in order.
>
> WHEREFORE, the Petition is hereby GIVEN DUE COURSE, and GRANTED. The decision dated 08 January 1997 rendered by the respondent court is hereby REVERSED and SET ASIDE, and judgment is hereby rendered DISMISSING the complaint in Civil Case No. 2547 of the Municipal Trial Court of Antipolo, Rizal for lack of jurisdiction.[3]

Petitioners filed a motion for reconsideration which was denied in a resolution dated 30 January 1998.[4]

Hence, the instant petition.

Petitioners submit the following issues for the Court's consideration[5]:

> - WHETHER OR NOT THE ALLEGATIONS OF THE COMPLAINT CLEARLY MADE OUT A CASE FOR UNLAWFUL DETAINER.
>
> - WHETHER OR NOT BASED ON THE ALLEGATION(S) OF THE COMPLAINT, THE MUNICIPAL TRIAL COURT OF ANTIPOLO, RIZAL, CLEARLY HAS ORIGINAL JURISDICTION OVER THE INSTANT COMPLAINT FILED BEFORE IT.

Since the two issues are closely intertwined, they shall be discussed together.

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In the main, petitioners claim that the averments of their complaint make out a case for unlawful detainer having alleged that private respondents unlawfully withheld from them the possession of the property in question, which allegation is sufficient to establish a case for unlawful detainer. They further contend that the summary action for ejectment is the proper remedy available to the owner if another occupies the land at the former's tolerance or permission without any contract between the two as the latter is bound by an implied promise to vacate the land upon demand by the owner.

The petition is not meritorious.

Under existing law and jurisprudence, there are three kinds of actions available to recover possession of real property: (a) accion interdictal; (b) accion publiciana; and (c) accion reivindicatoria.[6]

Accion interdictal comprises two distinct causes of action, namely, forcible entry (detentacion) and unlawful detainer (desahuico).[7] In forcible entry, one is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied.[8] The two are distinguished from each other in that in forcible entry, the possession of the defendant is illegal from the beginning, and that the issue is which party has prior de facto possession while in unlawful detainer, possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess.[9]

The jurisdiction of these two actions, which are summary in nature, lies in the proper municipal trial court or metropolitan trial court.[10] Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer.[11] The issue in said cases is the right to physical possession.

Accion publiciana is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year.[12] It is an ordinary civil proceeding to determine the better right of possession of realty independently of title.[13] In other words, if at the time of the filing of the complaint more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of the forcible entry or illegal detainer, but an accion publiciana. On the other hand, accion reivindicatoria is an action to recover ownership also brought in the proper regional trial court in an ordinary civil proceeding.[14]

To justify an action for unlawful detainer, it is essential that the plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered.[15] Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy.[16] As explained in Sarona v. Villegas[17]:

> But even where possession preceding the suit is by tolerance of the owner, still, distinction should be made.
>
> If right at the incipiency defendant's possession was with plaintiff's tolerance, we do not doubt that the latter may require him to vacate the premises and sue before the inferior court under Section 1 of Rule 70, within one year from the date of the demand to vacate.
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> x x x x
>
> A close assessment of the law and the concept of the word "tolerance" confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer - not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons: First. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress - in the inferior court - provided for in the

> rules. If one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. Second, if a forcible entry action in the inferior court is allowed after the lapse of a number of years, then the result may well be that no action of forcible entry can really prescribe. No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court - upon a plea of tolerance to prevent prescription to set in - and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one year time-bar to suit is but in pursuance of the summary nature of the action.[18] (Underlining supplied)

It is the nature of defendant's entry into the land which determines the cause of action, whether it is forcible entry or unlawful detainer. If the entry is illegal, then the action which may be filed against the intruder is forcible entry. If, however, the entry is legal but the possession thereafter becomes illegal, the case is unlawful detainer.

Indeed, to vest the court jurisdiction to effect the ejectment of an occupant, it is necessary that the complaint should embody such a 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.[19] The complaint must show enough on its face the court jurisdiction without resort to parol testimony.[20]

The jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was affected or how and when dispossession started, the remedy should either be an accion publiciana or an accion reivindicatoria in the proper regional trial court.[21] Thus, in Go, Jr. v. Court of Appeals,[22] petitioners filed an unlawful detainer case against respondent alleging that they were the owners of the parcel of land through intestate succession which was occupied by respondent by mere tolerance of petitioners as well as their deceased mother. Resolving the issue on whether or not petitioners' case for unlawful detainer will prosper, the court ruled[23]:

> Petitioners alleged in their complaint that they inherited the property registered under TCT No. C-32110 from their parents; that possession thereof by private respondent was by tolerance of their mother, and after her death, by their own tolerance; and that they had served written demand on December, 1994, but that private respondent refused to vacate the property. x x x
>
> It is settled that one whose stay is merely tolerated becomes a deforciant illegally occupying the land the moment he is required to leave. It is essential in unlawful detainer cases of this kind, that plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. This is where petitioners' cause of action fails. The appellate court, in full agreement with the MTC made the conclusion that the alleged tolerance by their mother and after her death, by them, was unsubstantiated. x x x
>
> The evidence revealed that the possession of defendant was illegal at the inception and not merely tolerated as alleged in the complaint, considering that defendant started to occupy the subject lot and then built a house thereon without the permission and consent of petitioners and before them, their mother. xxx Clearly, defendant's entry into the land was effected clandestinely, without the knowledge of the owners, consequently, it is categorized as possession by stealth which is forcible entry. As explained in Sarona vs. Villegas, cited in Muñoz vs. Court of Appeals [224 SCRA 216 (1992)] tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer not of forcible entry x x x.

And in the case of Ten Forty Realty and Development Corp. v. Cruz,[24] petitioner's complaint for unlawful detainer merely contained the bare allegations that (1) respondent immediately occupied the subject property after its sale to her, an action merely tolerated by petitioner; and (2) her allegedly illegal occupation of the premises

was by mere tolerance. The court, in finding that the alleged tolerance did not justify the action for unlawful detainer, held:

> To justify an action for unlawful detainer, the permission or tolerance must have been present at the beginning of the possession. x x x
>
> x x x x
>
> In this case, the Complaint and the other pleadings do not recite any averment of fact that would substantiate the claim of petitioner that it permitted or tolerated the occupation of the property by Respondent Cruz. The complaint contains only bare allegations that 1) respondent immediately occupied the subject property after its sale to her, an action merely tolerated by petitioner; and 2) her allegedly illegal occupation of the premises was by mere tolerance.
>
> These allegations contradict, rather than support, petitioner's theory that its cause of action is for unlawful detainer. First, these arguments advance the view that respondent's occupation of the property was unlawful at its inception. Second, they counter the essential requirement in unlawful detainer cases that petitioner's supposed act of sufferance or tolerance must be present right from the start of a possession that is later sought to be recovered.[25]

In the instant case, the allegations in the complaint do not contain any averment of fact that would substantiate petitioners' claim that they permitted or tolerated the occupation of the property by respondents. The complaint contains only bare allegations that "respondents without any color of title whatsoever occupies the land in question by building their house in the said land thereby depriving petitioners the possession thereof." Nothing has been said on how respondents' entry was effected or how and when dispossession started. Admittedly, no express contract existed between the parties. This failure of petitioners to allege the key jurisdictional facts constitutive of unlawful detainer is fatal.[26] Since the complaint did not satisfy the jurisdictional requirement of a valid cause for unlawful detainer, the municipal trial court had no jurisdiction over the case.[27] It is in this light that this Court finds that the Court of Appeals correctly found that the municipal trial court had no jurisdiction over the complaint.

WHEREFORE, the petition is DENIED and the judgment of the Court of Appeals dismissing the complaint in Civil Case No. 2547 of the MTC Antipolo, Rizal for lack of jurisdiction is hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1]Penned by Associate Justice Hector L. Hofileña with Associate Justices Artemon D. Luna and Artemio G. Tuquero, concurring.

[2] Rollo, pp. 88-90.

[3]Id., p. 91.

[4] Id., pp. 152-155.

[5] Id., p. 146.

[6]Javier v. Veridiano II, G.R. No. L-48050, 10 October 1994, 237 SCRA 565, 572-573.

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[7] Id.

[8] Go, Jr. v. Court of Appeals, 415 Phil. 172, 184 (2001).

[9] Id.

[10]Javier v. Veridiano II, supra note 6, pp. 572-573.

[11] Id., 572.

[12] Id., p. 573.

[13] Lopez v. David, Jr., G.R. No. 152145, 30 March 2004, 426 SCRA 535, 543.

[14] Javier v. Veridiano II, supra note 6, pp. 572-573.

[15] Ten Forty Realty and Development Corp. v. Cruz, G.R. No. 151212, 10 September 2003, 410 SCRA 485, 490.

[16] Id.

[17]131 Phil. 365 (1968).

[18] Id., 372-373.

[19] Sarmiento v. Court of Appeals, 320 Phil. 146, 156 (1995).

[20]Id.

[21] Id.

[22]Supra note 8.

[23] Id., pp. 184-186.

[24] Supra note 5.

[25]Id., pp. 490-491.

[26] Unida v. Heirs of Ambrosio Urban, G.R. No. 155432, 9 June 2005, 460 SCRA 68, 75.

[27]Id.

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