RUBEN SANTOS, PETITIONER, VS. SPOUSES TONY AYON AND MERCY AYON, RESPONDENTS.

G.R. NO. 137013. May 06, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the petition for review on certiorari assailing the Decision[1] of the Court of Appeals dated October 5, 1998 in CA-G.R. SP No. 4735 and its Resolution[2] dated December 11, 1998 denying the motion for reconsideration.

The petition alleges that on November 6, 1996, Ruben Santos, petitioner, filed with the Municipal Trial Court in Cities (MTCC), Branch 2, Davao City a complaint for illegal detainer against spouses Tony and Mercy Ayon, respondents, docketed as Civil Case No. 3506-B-96.

In his complaint, petitioner averred that he is the registered owner of three lots situated at Lanzona Subdivision, Matina, Davao City, covered by Transfer Certificates of Title (TCT) Nos. 108174, 108175, and 108176. Respondent spouses are the registered owners of an adjacent parcel of land covered by TCT No. T-247792. The previous occupant of this property built a building which straddled both the lots of the herein parties. Respondents have been using the building as a warehouse.

Petitioner further alleged in his complaint that in 1985, when he bought the three lots, he informed respondents that the building occupies a portion of his land. However, he allowed them to continue using the building. But in 1996, he needed the entire portion of his lot, hence, he demanded that respondents demolish and remove the part of the building encroaching his property and turn over to him their possession. But they refused. Instead, they continued occupying the contested portion and even made improvements on the building. The dispute was then referred to the barangay lupon, but the parties failed to reach an amicable settlement. Accordingly, on March 27, 1996, a certification to file action was issued.

In their answer, respondents sought a dismissal of this case on the ground that the court has no jurisdiction over it since there is no lessor-lessee relationship between the parties. Respondents denied they were occupying petitioner's property by mere tolerance, claiming they own the contested portion and have been occupying the same long before petitioner acquired his lots in 1985.

On July 31, 1997, the MTCC rendered its Decision in favor of petitioner, thus:

> "WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants ordering the latter, their successors-in-interest and other persons acting in their behalf to vacate the portion of the subject properties and peacefully surrender possession thereof to plaintiff as well as dismantle/remove the structures found thereon.
>
> Defendants are further ordered to pay reasonable value for the use and occupation of the encroached area in the amount of One Thousand Pesos (P1,000.00) a month beginning September 1996 and the subsequent months

> thereafter until premises are vacated; to pay attorney's fees of Ten Thousand Pesos (P10,000.00); and to pay the costs of suit.
>
> SO ORDERED."[3]

On appeal, the Regional Trial Court (RTC), Branch 11, Davao City, in its Decision dated February 12, 1998 in Civil Case No. 25, 654-97, affirmed in toto the MTCC judgment.[4] The RTC upheld the finding of the MTCC that respondents' occupation of the contested portion was by mere tolerance. Hence, when petitioner needed the same, he has the right to eject them through court action.

Respondents then elevated the case to the Court of Appeals through a petition for review. In its Decision dated October 5, 1988 now being challenged by petitioner, the Court of Appeals held that petitioner's proper remedy should have been an accion publiciana before the RTC, not an action for unlawful detainer, thus:

> "In this case, petitioners were already in possession of the premises in question at the time private respondent bought three (3) lots at the Lanzona Subdivision in 1985, a portion of which is occupied by a building being used by the former as a bodega. Apart from private respondent's bare claim, no evidence was alluded to show that petitioners' possession was tolerated by (his) predecessor-in-interest. The fact that respondent might have tolerated petitioners' possession is not decisive. What matters for purposes of determining the proper cause of action is the nature of petitioners' possession from its inception. And in this regard, the Court notes that the complaint itself merely alleges that defendants-petitioners have been "occupying a portion of the above properties of the plaintiff for the past several years by virtue of the tolerance of the plaintiff." Nowhere is it alleged that his predecessor likewise tolerated petitioners' possession of the premises. x x x.
>
> Consequently, x x x, respondent should present his claim before the Regional Trial Court in an accion publiciana and not before the Municipal Trial Court in a summary proceeding of unlawful detainer.
>
> WHEREFORE, the decision under review is hereby REVERSED and SET ASIDE. Accordingly, the complaint for unlawful detainer is ordered DISMISSED."[5]

Petitioner filed a motion for reconsideration, but was denied by the Appellate Court in its Resolution dated December 11, 1998.

Hence, the instant petition for review on certiorari ascribing to the Court of Appeals the following errors:

> "I
>
> THE HONORABLE COURT OF APPEALS MISAPPLIED THE LAW IN DISMISSING THE INSTANT CASE ON THE GROUND THAT PETITIONER SHOULD PRESENT HIS CLAIM BEFORE THE REGIONAL TRIAL COURT IN AN ACCION PUBLICIANA.
>
> II
>
> THE FINDINGS OF THE HONORABLE COURT OF APPEALS IS NOT IN CONSONANCE WITH EXISTING LAWS AND JURISPRUDENCE."

The sole issue here is whether the Court of Appeals committed a reversible error of law in holding that petitioner's complaint is within the competence of the RTC, not the MTCC.

Petitioner contends that it is not necessary that he has prior physical possession of the questioned property before he could file an action for unlawful detainer. He stresses that he tolerated respondents" occupancy of the portion in controversy until he needed it. After his demand that they vacate, their continued possession became illegal. Hence, his action for unlawful detainer before the MTCC is proper.

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Respondents, in their comment, insisted that they have been in possession of the disputed property even before petitioner purchased the same on April 10, 1985. Hence, he cannot claim that they were occupying the property by mere tolerance because they were ahead in time in physical possession.

We sustain the petition.

It is an elementary rule that the jurisdiction of a court over the subject matter is determined by the allegations of the complaint and cannot be made to depend upon the defenses set up in the answer or pleadings filed by the defendant.[6] This rule is no different in an action for forcible entry or unlawful detainer.[7] All actions for forcible entry or unlawful detainer shall be filed with the proper Metropolitan Trial Courts, the Municipal Trial Courts and the Municipal Circuit Trial Courts, which actions shall include not only the plea for restoration of possession but also all claims for damages and costs arising therefrom.[8] The said courts are not divested of jurisdiction over such cases even if the defendants therein raises the question of ownership over the litigated property in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership.[9]

Section 1, Rule 70 on forcible entry and unlawful detainer of the 1997 Rules of Civil Procedure, as amended, reads:

> "Section 1. Who may institute proceedings, and when. – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee or other person may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs."

Under the above provision, there are two entirely distinct and different causes of action, to wit: (1) a case for forcible entry, which is an action to recover possession of a property from the defendant whose occupation thereof is illegal from the beginning as he acquired possession by force, intimidation, threat, strategy or stealth; and (2) a case for unlawful detainer, which is an action for recovery of possession from defendant whose possession of the property was inceptively lawful by virtue of a contract (express or implied) with the plaintiff, but became illegal when he continued his possession despite the termination of his right thereunder.[10]

Petitioner's complaint for unlawful detainer in Civil Case No. 3506-B-96 is properly within the competence of the MTCC. His pertinent allegations in the complaint read:

> "4. That defendants (spouses) have constructed an extension of their residential house as well as other structures and have been occupying a portion of the above PROPERTIES of the plaintiff for the past several years by virtue of the tolerance of the plaintiff since at the time he has no need of the property;
>
> 5. That plaintiff needed the property in the early part of 1996 and made demands to the defendants to vacate and turn over the premises as well as the removal (of) their structures found inside the PROPERTIES of plaintiff; that without any justifiable reasons, defendants refused to vacate the portion of the PROPERTIES occupied by them to the damage and prejudice of the plaintiff.
>
> 6. Hence, plaintiff referred the matter to the Office of the Barangay Captain of Matina Crossing 74-A, Davao City for a possible settlement sometime in the latter part of February 1996. The barangay case reached the Pangkat but no settlement was had. Thereafter, a "Certification To File Action" dated March 27, 1996 was issued x x x;

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x x x."[11] (underscoring ours)

Verily, petitioner's allegations in his complaint clearly make a case for an unlawful detainer. We find no error in the MTCC assuming jurisdiction over petitioner's complaint. A complaint for unlawful detainer is sufficient if it alleges that the withholding of the possession or the refusal to vacate is unlawful without necessarily employing the terminology of the law.[12] Here, there is an allegation in petitioner's complaint that respondents occupancy on the portion of his property is by virtue of his tolerance. Petitioner's cause of action for unlawful detainer springs from respondents' failure to vacate the questioned premises upon his demand sometime in 1996. Within one (1) year therefrom, or on November 6, 1996, petitioner filed the instant complaint.

It bears stressing that possession by tolerance is lawful, but such possession becomes unlawful when the possessor by tolerance refuses to vacate upon demand made by the owner. Our ruling in Roxas vs. Court of Appeals[13] is applicable in this case: "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."

WHEREFORE, the petition is GRANTED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 47435 are hereby REVERSED and SET ASIDE. The Decision dated February 12, 1998 of the Regional Trial Court, Branch 11, Davao City in Civil Case No. 25, 654-97, affirming the Decision dated July 31, 1997 of the Municipal Trial Court in Cities, Branch 2, Davao City in Civil Case No. 3506-B-96, is hereby REINSTATED.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

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[1] Rollo, pp. 55-59. Penned by Associate Justice Artemio G. Tuquero, retired, and concurred in by Associate Justice Arturo B. Buena, now retired Justice of this Court, and Associate Justice Eubolo G. Verzola (deceased).

[2] Rollo at 60.

[3] Id. at 50.

[4] Id. at 53.

[5] Rollo at 59.

[6] Rozas vs. Court of Appeals, G.R. No. 138955, October 29, 2002, 391 SCRA 351, citing Vda. de Cruz vs. Court of Appeals, 304 SCRA 197 (1999).

[7] Lavido vs. Court of Appeals, G.R. No. 123462, April 10, 1997, 271 SCRA 143.

[8] Progressive Development Corp., Inc. vs. Court of Appeals, G.R. No. 123555, January 22, 1999, 301 SCRA 637.

[9] Hilario vs. Court of Appeakls, 260 SCRA 420 (1996); Caniza vs Court of Appeals, 268 SCRA 640 (1997); Heirs of Placido Miranda vs. Court of Appeals, 255 SCRA 368 (1996).

[10] Dikit vs. Ycasiano, 89 Phil. 44, 48 (1951); Medel vs. Militante, 41 Phil. 526, 530 (1921).

[11] Rollo at 80.

[12] Jimenez vs. Patricia, Inc., G.R. No. 134651, September 18, 2000, 340 SCRA 525; Sumulong vs. Court of

Appeals, G.R. No. 108817, May 10, 1994, 232 SCRA 372; Pangilinan vs. Aguilar, 43 SCRA 136.

[13] Supra; Jimenez vs. Patricia, Inc., id.; Banco de Oro Savings and Mortgage Bank vs. Court of Appeals, 182 SCRA 464, 469 (1990); Dacudao vs. Consolacion, 122 SCRA 877, 883 (1983); Vda. de Catchuela vs. Francisco, 98 SCRA 172, 177 (1980); Calubayan vs. Pascual, 21 SCRA 146, 148 (1967); Munoz vs. Court of Appeals, G.R. No. 102693, September 23, 1992, 214 SCRA 216.

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