

AMPARO ROXAS, PETITIONER, VS. HON. COURT OF APPEALS, AND MANOTOK REALTY, INC., RESPONDENTS.

G.R. No. 138955. October 29, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking the reversal of the decision[1] of the Honorable Court of Appeals in CA-G.R. SP No. 44650. The CA had affirmed that of the Regional Trial Court[2] of Marikina, Branch 273, in SCA No. 97-198-MK, which earlier overturned the order[3] of the Metropolitan Trial Court of Marikina, Branch 76, in Civil Case No. 96-6235, for unlawful detainer.

The factual antecedents as found by the Court of Appeals are as follows:

A complaint for unlawful detainer was filed by herein private respondent Manotok Realty, Inc. against herein petitioner Amparo Roxas before the Metropolitan Trial Court of Marikina, Branch 76. Manotok Realty, Inc. alleged in its complaint that: it is the registered owner of a parcel of land located at the Manotok-Ramos Subdivision IX, City of Marikina, Metro Manila, known as Lot 14, Block 9 duly covered under Transfer Certificate of Title No. 100498; that sometime on September 18, 1961, plaintiff and defendant entered into a Contract to Sell covering the subject property, however, on September 14, 1973, plaintiff notarially rescinded and cancelled the contract as of June 25, 1966 for defendant's failure to comply with the terms thereof, specifically for her failure to pay the stipulated monthly payments; that despite receipt of said notice of cancellation however, defendant continued in her possession and occupation of subject parcel of land without any legal basis except by mere tolerance of plaintiff; that defendant since and from that time of the service of the notice of rescission and the demand to vacate on September 14, 1973, defendant has possessed and occupied said property without making any payment to plaintiff of such reasonable compensation for her use and occupancy thereof; that on August 3, 1995, plaintiff needing said property for its own use, made a final demand to defendant, through counsel, to vacate subject property within three (3) months from receipt thereof; that notwithstanding however her receipt of said final demand and the lapse of the three (3) months period within which to vacate, defendant unlawfully failed and refused to vacate the same without legal basis.

In her answer, Amparo Roxas denied the material allegations of the complaint, and by way of special and affirmative defenses, alleged that the notice of cancellation has not been received by defendant hence, a condition precedent has not been complied with, thus subject to dismissal; that she has complied with all the terms and conditions of the Contract to Sell, but Manotok Realty, Inc. has not been recording defendant's compliance, amounting to plaintiff's dealing in bad faith and with malice afterthought; and by way of special and affirmative defense alleged that there is no cause of action and therefore, the complaint must be dismissed; and by way of counterclaim seeks moral and exemplary damages in the total amount of P200,000.00 and an award of attorney's fee in the amount of P50,000.00.

After the requisite preliminary conference and the submission of affidavits and position papers by both parties, Hon. Judge Jerry B. Gonzales of MeTC, Marikina City, Branch 76, dismissed the complaint on the ground of lack of jurisdiction. In an order dated November 20, 1996, Judge Gonzales ratiocinated:

This is a clear case of ejectment through accion publiciana, jurisdiction of which belongs to the Regional Trial Court because the cause of action is tolerance.

The Honorable Supreme Court in the case of *Magin vs. Avelino*,^[4] 127 SCRA 602, said:

“Where the possession of the land by another is due to tolerance of owner the action for ejectment is accion publiciana, not unlawful detainer or forcible entry.”

Under the above doctrine, the demand being that of terminating possession allowed by tolerance of the alleged owner, this Court has no jurisdiction to try the case.^[5]

Aggrieved, Manotok Realty, Inc. appealed the matter before the Regional Trial Court of Marikina, Branch 273. The RTC ruled for Manotok Realty, Inc. holding that the MeTC had jurisdiction to hear and decide the case as “the complaint is one for unlawful detainer” as clearly alleged in the complaint, “and not for accion publiciana as incorrectly ruled by the lower court.”^[6]

The RTC disposed of the case as follows:

WHEREFORE, foregoing premises considered, the judgement appealed from is hereby REVERSED and SET ASIDE. Judgment is hereby rendered in favor of plaintiff-appellant and against defendant-appellee Amparo Roxas, ordering the latter and all persons claiming rights under her:

- 1) to immediately vacate and surrender the possession of the premises in question described in paragraph 3 of the complaint;
- 2) to pay plaintiff-appellant the amount of P2,000.00 per month as reasonable compensation for the use and occupation of the subject premises from November 4, 1995 up to the time the premises in question is fully vacated, and possession thereof is surrendered to plaintiff-appellant;
- 3) to pay plaintiff-appellant the sum of TEN THOUSAND (P10,000.00) PESOS as reasonable attorney’s fees, and the costs of suit.

SO ORDERED.^[7]

The reversal of the MeTC order prompted Amparo Roxas to elevate the matter to the Court of Appeals for review under Rule 42. However, the appellate court affirmed the aforequoted RTC decision opining that Amparo’s reliance on *Velez vs. Avelino*^[8] is misplaced for the latter partakes of a different factual setting. The RTC of Marikina had found, *inter alia*:

In this particular case, the private respondents from the very beginning occupied the subject premises without any contract and constructed thereon houses sans any building permits. The Court described them as squatters and characterized their possession as one of tolerance...in the case at bench, the petitioner was not a squatter but a lawful possessor of the property by virtue of a contract to sell duly entered into by the petitioner and private respondent. Her occupation became illegal only upon her refusal to vacate despite the cancellation of the contract to sell and a demand letter dated August 3, 1995 for her to vacate.

While in the *Velez* case, *supra*, there was no contract, express or implied, at the start, in the case at bench, there was such an express contract to sell that governed the relationship between the petitioner and private respondent... Accordingly, it is imperative in a case of unlawful detainer that the incipient occupancy is founded on some legal authority such as an express or implied contract, which however, has expired. In the *Velez* case *supra*, there was no expiration or termination to speak of because there was really no contract in the first place, whereas, in the instant case there was.^[9]

The aforesaid finding was upheld by the Court of Appeals.

Hence, this petition for review on certiorari raising the lone issue of:

WHETHER OR NOT THE REGULAR COURT HAS JURISDICTION TO TRY AND HEAR THE INSTANT CASE.[10]

While this petition for review does not assign any specific error committed by the court a quo in affirming the decision of the RTC, what petitioner raises is the question of jurisdiction of the regular courts of justice over the subject matter of this case. According to her petition,[11] the matter involved in the present petition falls squarely within the jurisdiction of an administrative agency, namely the Housing and Land Use Regulatory Board (HLURB).[12] She explains that “this is for the simple reason that the issue between the parties is the determination of whether or not the terms and conditions of their contract to sell are violated.” She adds that she is one of the buyers on installment of a subdivision lot in private respondent’s subdivision. For Manotok Realty Inc. is the subdivision owner and/or developer. Consequently, according to petitioner, any question that may arise regarding their contract, be it for non-payment of amortization, specific performance, or in general, violation of any term or condition thereof, including a special instance of ejectment[13] if proper, should be resolved before the HLURB by a proper initiatory pleading filed thereat.[14]

Moreover, petitioner Amparo Roxas reiterated in her memorandum[15] that although the complaint has been framed to be one for unlawful detainer, the truth is that the matter involves a dispute between a subdivision owner/developer and a subdivision lot buyer. She further asserts that she could not be estopped from raising the question of lack of jurisdiction of the courts to try and hear the case because, in her position paper filed with the MeTC, she has already raised the argument that the matter was cognizable by the HLURB.

Respondent Manotok Realty, Inc., maintains the contrary, to wit, that the settled rule is that the question of jurisdiction must be raised before the inferior court. Otherwise, petitioner is barred by estoppel or even laches. Respondent contends that in the determination of whether or not an inferior court has jurisdiction over ejectment suits, what determines the nature of the action as well as the court that has jurisdiction over the case are the allegations in the complaint. Citing *Sumulong vs. CA*,[16] private respondent avers that the cause of action in a complaint is not what the designation of the complaint states, but what the allegations in the body of the complaint define or prescribe. Private respondent claims that the CA correctly pointed out that the complaint expressly provides that the case is one for unlawful detainer and not an *accion publiciana*.

In our view, the following issues now appear for the Court’s resolution: (1) whether petitioner could still raise the issue of jurisdiction at this stage of the proceedings; and (2) whether the instant case falls within the exclusive jurisdiction of the HLURB.

Considering the circumstances of the cases, including the averments of the parties, we find the present petition without merit.

On the first issue, we hold that petitioner is already estopped from raising the issue of jurisdiction. What she raised in her position paper as a special and affirmative defense was the purported failure of the complaint to state a cause of action, arising from an alleged failure to exhaust administrative remedies before the HLURB as a condition precedent to filing a case in court. This is not an explicit attack on the court’s jurisdiction over the subject matter of the complaint, but merely a claim for the need to go through an alleged jurisdictional requirement, namely exhaustion of administrative remedies.

Granted that she placed MeTC’s jurisdiction at issue, on the supposition that it is the HLURB that has jurisdiction over Manotok’s complaint below, she abandoned her theory after she obtained a favorable judgment at the MeTC. She chose not to appeal the MeTC’s decision and instead consistently adopted in her pleadings before the

RTC and CA, the MeTC's ruling that the action is one for accion publiciana. Nowhere in her pleadings before the RTC and CA did she raise the argument that jurisdiction properly lies with the HLURB. As earlier mentioned, it was only in her present petition with this Court that she squarely asserted for the first time that the HLURB has exclusive jurisdiction over the instant case.

Indeed, the general rule is that a question of jurisdiction may be raised at any time, even on appeal, provided that doing so does not result in a mockery of the tenets of fair play.[17] When, however, a party adopts a particular theory, and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal.[18] Where the case was tried by the lower court and the parties on a certain theory, it will be reviewed and decided on that theory, insofar as the pleadings, liberally construed, permit, and not be approached from a different point of view.[19]

Petitioner is bound by the theory behind her arguments before the RTC and CA that the case is properly an accion publiciana as the cause of action arises from the termination of possession by mere tolerance. Her assertion now that the issue involves the determination of whether or not the terms and conditions of the contract to sell have been violated by private respondent, which must be decided by the HLURB, constitutes a change of theory that could require presentation of further evidence. Given this premise, the Court cannot countenance petitioner's act of adopting inconsistent postures by attacking the jurisdiction of the regular courts to which she has submitted, voluntarily. Estoppel bars her from doing so.

Nevertheless, to avoid further delay in this case, let us resolve the second issue of whether the HLURB has the exclusive primary jurisdiction to try and hear the instant case.[20]

In support of her position, petitioner cites Sec. 1 of P.D. 1344,[21] to wit:

Sec. 1. In the exercise of its function to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide the cases of the following nature:

- Unsound real estate business practices;
- Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
- Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

In our view, the mere relationship between the parties, i.e., that of being subdivision owner/developer and subdivision lot buyer, does not automatically vest jurisdiction in the HLURB. For an action to fall within the exclusive jurisdiction of the HLURB, the decisive element is the nature of the action as enumerated in Section 1 of P.D. 1344. On this matter, we have consistently held that the concerned administrative agency, the National Housing Authority (NHA) before and now the HLURB, has jurisdiction over complaints aimed at compelling the subdivision developer to comply with its contractual and statutory obligations.

Thus, in *Arranza vs. B.F. Homes, Inc.*, [22] we sustained the HLURB's jurisdiction over petitioners' complaint for specific performance to enforce their rights as purchasers of subdivision lots as regards rights of way, water, open spaces, road and perimeter wall repairs, and security. Also, in *Que vs. CA*, [23] we noted that:

... the complaint against Que is distinct from the complaint against GDREC and its officers before the HLURB. The first basically pertains to non-performance by the buyer of her obligations to Klaver, whereas the second deals with non-performance by the seller of its own obligations to the buyer, such that Klaver properly sued them before different fora.

Accordingly, the second complaint by Klaver against GDREC and its officers for unsound real estate practices consisting in their unwarranted delay in the delivery of Unit No. 1902-A to him was properly lodged with the HLURB. Moreover, in *Siasoco vs. Narvaja*,^[24] we ruled that it is the HLURB, not the trial court that has jurisdiction over complaints for specific performance filed against subdivision developers to compel the latter to execute deeds of absolute sale and to deliver the certificates of titles to buyers.

But the antecedent circumstances to the present petition are in stark contrast to those in the cited cases of *Arranza and Que*. Perusal of paragraphs (a), (b), and (c) of Sec. 1, P.D. 1344 abovesited, vis-à-vis the allegations of the complaint^[25] for ejectment filed by Manotok Realty, Inc. with the MeTC, shows clearly that the HLURB has no jurisdiction over the complaint. Note particularly pars. (b) and (c) as worded, where the HLURB's jurisdiction concerns cases commenced by subdivision lot or condominium unit buyers. As to par. (a), concerning "unsound real estate practices," it would appear that the logical complainant would be the buyers and customers against the sellers (subdivision owners and developers or condominium builders and realtors), and not vice versa.

Petitioner's reliance on *Francel Realty Corporation vs. CA*, is misplaced. In that case, the complaint for unlawful detainer was premised on the "failure of the buyer on installment basis of real property to pay based on the right to stop paying monthly amortizations under P.D. 957."^[26] That involves, "a determinative question...exclusively cognizable by the HLURB," i.e., a determination of the rights and obligations of parties in a sale of real estate under P.D. 957, not P.D. 1344. Private respondent therein, Francisco Sycip, in fact, filed earlier a complaint against Francel Realty Corp. for "unsound real estate business practices" with the HLURB. Thus, per Mendoza, J., "Petitioner's cause of action against private respondent [Sycip] should instead be filed as a counterclaim in HLURB Case No. REM-07-9004-80 in accordance with Rule 6, S.6 of the Rules of Court..."^[27] That situation does not obtain in the present case.

Petitioner Amparo Roxas' attempt to bring the case within HLURB's jurisdiction, by belatedly asserting that the matter involved is the determination of whether or not the terms and conditions of the contract to sell between the parties have been violated, would contravene settled jural principles.

First, 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.^[28] Since there is no dispute that the allegations of the complaint filed below by Manotok Realty, Inc., sufficiently describe unlawful detainer, the MeTC of Marikina properly acquired jurisdiction over the subject matter thereof.

Second, the cause of action for unlawful detainer between the present parties springs from the failure of petitioner to vacate the premises upon lawful demand of the owner, the private respondent. For petitioner's possession of the land in question is allegedly by mere tolerance or permission. Our ruling in *Banco de Oro Savings and Mortgage Bank vs. Court of Appeals*^[29] is demonstrably applicable:

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 decision of the Court of Appeals in CA-G.R. SP No. 44650 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and Austria-Martinez, JJ., concur.
Callejo, Sr., J., no part. Prior professional relationship to a party.

[1] Rollo, pp. 23-30.

[2] Id. at 88-92.

[3] Id. at 85-87.

[4] Correct title is Velez vs. Avelino.

[5] Rollo, pp. 86-87.

[6] Id. at 90.

[7] Id. at 92.

[8] 127 SCRA 602 (1984).

[9] Rollo, p. 26.

[10] Id. at 167.

[11] Id. at 8-21.

[12] Created under E.O. 648, § 8 (11) (1981), as amended by E.O. No. 90 (1986).

[13] Francel Realty Corporation vs. CA, 252 SCRA 127 (1996).

[14] Rollo, p. 16.

[15] Id. at 162-173.

[16] 232 SCRA 372, 385-386 (1994).

[17] Jimenez vs. Patricia, Inc., 340 SCRA 525, 531 (2000).

[18] Filipino Merchants Insurance Co., Inc. vs. CA, 179 SCRA 638, 647 (1989); Lianga Lumber Company vs. Lianga Timber Co., Inc., 76 SCRA 197, 223 (1977); Atkins Kroll & CO., Inc. vs. B. Cua Hian Tek, 102 Phil. 948, 952 (1958).

[19] 5 C.J.S., Section 1464, pp. 77-79.

[20] Rollo, p. 167.

[21] EMPOWERING THE NATIONAL HOUSING AUTHORITY TO ISSUE WRIT OF EXECUTION IN THE ENFORCEMENT OF ITS DECISION UNDER PRESIDENTIAL DECREE NO. 957, April 2, 1978.

[22] 333 SCRA 799, 814-815 (2000).

[23] 339 SCRA 505, 511 (2000).

[24] 315 SCRA 144, 148 (1999).

[25] Records, pp. 1-4.

[26] REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF. (PD 957, as amended)

[27] Supra, note 13 at 132.

[28] Vda. de Cruz vs. Court of Appeals, 304 SCRA 197, 205 (1999).

[29] 182 SCRA 464, 469 (1990), citing Dakudao 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).

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