FLORENTINO GO, JR., MA. LUZVIMINDA GO, LEONIDA GO, FELIPE GO, MARIETTA GO, ROBERTO GO, ESTRELITA GO, ANTONIO GO, ALBERTO GO, BABY LUCILA GO AND MANUEL GO, PETITIONERS, VS. HON. ...

G.R. No. 142276. August 14, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

The decision[1] promulgated on January 27, 1999 by respondent Court of Appeals in CA-G.R. SP No. 46779 reversing the decision of the regional trial court, as well as its resolution of February 28, 2000 denying herein petitioners' motion for reconsideration, are assailed in this petition for review on certiorari.

This case originated from a complaint for ejectment filed by herein petitioners Florentino, Jr., Luzviminda, Leonida, Felipe, Marietta, Roberto, Estrelita, Alberto and Baby Lucila (all surnamed Go), as plaintiffs, against herein private respondent Aurora I. Perez, as defendant, in the Metropolitan Trial Court (MTC) of Caloocan City as Civil Case No. 22172, which complaint alleges these material facts:

> x x x
>
> 2. Plaintiffs are the children and the only surviving heirs of the late spouses Florentino, Sr. and Lucila Go who both died intestate on June 10, 1973 and January 22, 1988, respectively, and in whose name a parcel of land situated in Caloocan City is registered under Transfer Certificate of Title No. C-32110.
>
> A copy of said Transfer Certificate of Title No. C-32110 is attached hereto and marked as Annex "A" and made as an integral part of this complaint.
>
> 3. Through mere tolerance of plaintiffs as well as their late mother, defendant was allowed to occupy the said parcel of land temporarily on condition that she would vacate the same once she is asked.
>
> 4. In December, 1994, plaintiffs, feeling the need to establish another residence to accommodate a growing family finally asked defendant to vacate the premises. This demand to vacate was repeated several times more but the same went unheeded even up to this time thus prompting plaintiffs to seek the help of the local Barangay office.
>
> 5. Several conciliation meetings were held but no settlement was reached and as a result of which a Certification to File Action was issued as shown by the attached copy of the same marked as Annex "B" and made as an integral part of the complaint.
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> 6. By reason of defendant's unjustified refusal to vacate the premises notwithstanding repeated demands therefor, plaintiffs were forced to engage the services of counsel for an agreed fee of P5,000.00 plus P500.00 per appearance for which defendant should be made to pay plaintiffs. Defendant should likewise be made to pay plaintiffs litigation expenses of no less than P10,000.00 and the sum of at least P2,000.00 a month for the reasonable use and occupancy of the premises from January, 1995 until the same is vacated."[2]

In her answer,[3] defendant denied the allegations of the plaintiffs and invoked the following alternative defenses, among others: that she has been occupying the subject land since 1963, through permission of the security guards of the People's Homesite and Housing Corporation (PHHC); that she cleared the said land and constructed houses for her family thereon, and applied for its acquisition with the PHHC and its successor-in-interest, the National Housing Authority (NHA); that it was only in December, 1994, when Estrelita Go demanded that she vacate the premises, that she learned that the land had already been titled in the name of Lucila Go in 1980; that Lucila Go acquired the said title through false statements in her application with the PHHC; and that she has the preferential right to acquire the property .

After the issues have been joined, the MTC heard the case under the Rules on Summary Procedure and decided on the basis of the position papers and the oral and documentary evidence of the parties.

On August 26, 1996, the MTC rendered its decision dismissing the case without prejudice. According to the MTC, the case is neither an action for unlawful detainer nor forcible entry. The MTC reasoned out that it could not be a case for unlawful detainer because plaintiffs failed to substantiate their claim that defendant's possession of the subject parcel of land was by mere tolerance as the plaintiffs in open court denied such tolerance, either by their parents or by themselves; and neither could it be forcible entry for failure to file the action within the one year period counted from the date of forcible entry.

On appeal to the Regional Trial Court (RTC) of Caloocan City, Branch 131, in Civil Case No. 17707, plaintiffs assailed the MTC decision. On December 18, 1997, said lower appellate court reversed and set aside the judgment of the MTC, disposing as follows:

> (1) Ordering the defendant-appellee and all persons claiming rights under her to immediately vacate the subject premises, particularly, Lot 10, Block 50 of the consolidation subdivision plan PCS-5914, situated in Camarin, Caloocan City, and covered by TCT No. C-32110;
>
> (2) Ordering the plaintiff-appellee to pay plaintiffs-appellants P5,000.00 as and for attorney's fees;
>
> (3) Ordering the defendant-appellee to pay plaintiffs-appellants the amount of P2,000.00 per month for the reasonable use and occupancy of the subject premises from the date of the filing of the complaint in court on June 27, 1996 until she finally vacates the same, and to pay the costs of suit;
>
> (4) Ordering the dismissal of defendant-appellee's counterclaim for lack of merit.[4]

In reversing the MTC, the RTC reasoned out as follows:

> "However, the lower court had overlooked and misappreciated facts of substance in rendering its assailed decision.
>
> It was not reliably disputed that a certain attorney was allowed by the registered owner Lucila Go to temporarily utilize the house within the subject premises sometime in 1964 and it was only in 1977 that the defendant-appellee was first seen to be residing with the attorney her relative, in the said house and, thus she was similarly tolerated to stay thereat. It was only sometime in December 1994 that demand was made upon the defendant-appellee to vacate the subject premises.
>
> The lower court overlooked and misappreciated the facts when it concluded that the plaintiffs denied that tolerance was given to the defendant-appellee because what was propounded by the plaintiffs-appellants during the preliminary conference was that their mother did not allow the defendant to build her house on the premises (TSN, February 29, 1996, pages 5 and 6) and not that the claim of tolerance was denied. In this complaint for ejectment, the remedies of unlawful detainer and forcible entry have been fully substantiated.
>
> As regards to unlawful detainer, the defendant-appellee, who was able to lawfully enter the subject premises by

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> residing with her relative attorney, who was tolerated to temporarily occupy and reside in the house within the premises, is now being asked to vacate the same but refused to heed the demand. "After demand and its repudiation, the continuing possession of private respondent became illegal and the complaint for unlawful detainer filed by petitioner was its proper remedy." (Asset Privatization vs. Court of Appeals 229 SCRA 1994).
>
> As regards to forcible entry, the subsequent construction and occupancy of defendant-appellee's house was by stealth. Consistent with the doctrine laid down in the case of Sumulong vs. Court of Appeals, 232 SCRA 372, which applies by analogy, the defendant-appellee was able to avoid discovery and to gain entrance into and remain within the subject premises, the defendant-appellee, without permission, and by her secret or clandestine act of residing first with her relative attorney who was tolerated to reside temporarily in the said premises, succeeded in constructing her own house which she finally occupied. Applicable in this case, by analogy, is the pronouncement in Piano vs. Court of Appeals, 169 SCRA 485 (1989) that "The remedies of forcible entry and illegal detainer are both allowed in a single action as illegal detainer refers to the 5-hectare portion of the land while the forcible entry refers to the remaining portion."
>
> It is undubitable that the lower court erred in its conclusion that the claim of tolerance was denied and that if this case is for forcible entry, this ejectment case should have been filed within one (1) year from as early as 1977 despite the evidence on record that demand was made in December 1994 and the case for ejectment was filed just about six (6) months after or, specifically, on June 27, 1995, which filing is well within the prescribed period to file the case in court. For sure, it has been held in Elane vs. Court of Appeals, 172 SCRA 822 (1989) that "Where forcible entry was made clandestinely, the one year prescriptive period should be counted from the time respondent demanded that the deforciant desist from such possession when the former learned thereof," and the essence of such pronouncement is that "to deprive the lawful possessor of the benefit of summary action, under Rule 70 of the Revised Rule, simply because the stealthy intruder manages to conceal the trespass for more than a year would be to reward clandestine usurpation even if they are unlawful" (Vda. de Prieto vs. Reyes, 14 SCRA 430).
>
> Furthermore, as held in the Mabalot vs. Madela, 121 SCRA 347, the time limitation of one year within which to file an action for forcible entry and detainer is reckoned not from the moment of occupancy by the defendant, but from the time that his possession becomes unlawful.
>
> In this case, the jurisdictional requirement of demand was complied with as it was alleged in the complaint that demand was made in December 1994 for defendant to vacate the premises, thus, in substance, where a complaint in an ejectment case sufficiently alleges prior demand, the jurisdictional requirement is deemed complied with (Hautea vs. Magallon, 12 SCRA 514)."

Dissatisfied with the RTC's pronouncements, defendant Aurora I. Perez elevated the case to the respondent Court of Appeals. On January 27, 1999, the Court of Appeals rendered judgment in CA-G.R. SP No. 46779 reversing the decision of the RTC and reinstating that of the MTC. The Court of Appeals explained thus-

> The cause of action embodied in the respondents' complaint is that the petitioner occupied the land in question only by tolerance of their mother and, after her death, by their own tolerance. Article 537 of the New Civil Code provides that –
> "Acts merely tolerated, and those executed clandestinely and without the knowledge of the possessor of a thing, or by violence, do not affect possession".

Tolentino explains the concept of tolerance under the said article thus: -

> "Acts merely tolerated are those which by reason of neighborliness or familiarity, the owner of property allows his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who permits them out of friendship or courtesy. They are acts of little disturbances which a person, in the interest of

> neighborliness or friendly relations, permits others to do on his property, such as passing over the land, tying a horse therein, or getting some water from the well. Although this is continued for a long time, no right will be acquired by prescription.
>
> There is tacit consent of the possessor to the acts which are merely tolerated. Thus, not every case of knowledge and silence on the part of the possessor can be considered mere tolerance. By virtue of tolerance that is considered as an authorization, permission or license, act of possession are realized and performed. The question reduces itself to the existence or non-existence of permission.
>
> It is difficult to draw a dividing line between tolerance of the owner and abandonment of his rights when the acts of the possessor are repeated, specially when the lapse of time has consolidated and affirmed a relation the legality of the origin of which can be doubted. When there is license or permission, the proof of easy. It is for the court to decide in each case whether there exists tolerance or an abandonment of right on the part of the owner." (Tolentino, Civil Code of the Philippines, 1972 ed., Vol. 2, pp. 253-254)

In the instant case, the evidence of tolerance on the part of the respondents consists of the affidavit of Luzviminda Go, which states, among others, the following: -

> "1. That I am one of the daughters of the late Lucila Go who died on January 22, 1988;
>
> 2. That sometime in 1964 I was made to accompany my mother to visit a parcel of land which I know as the lot subject of our ejectment case against one Aurora Perez;
>
> 3. That during that visit I saw a lone house there being occupied by a certain 'Attorney' who I learned from my mother that he was being allowed to stay there temporarily as we had no immediate need yet of the premises as we were allowed free use of a premises in Cubao, Quezon City belonging to a relative of our grandfather;
>
> 4. That in early 1977 when I had another chance to visit the subject premises, I saw for the first time the person of Aurora Perez whom I came to know then as Baby Sansano residing at the same house which earlier was being utilized as the residence of the certain "Attorney";
>
> 5. That I heard from my mother that certain "Attorney" was a relative of "Aurora Perez'"

To our minds, this does not constitute sufficient evidence of tolerance to the occupancy by the petitioner of the disputed lot. In the first place, the knowledge of Luzviminda Go of such alleged tolerance was derived from what her mother told her, hence, hearsay. In the second place, the permission to stay on the lot was given only to a certain "Attorney", and not to the petitioner herself, who was only considered as a relative of the "Attorney".

In fact, the records of the pre-trial conference conducted by the Metropolitan Trial Court on February 29, 1996 shows that the respondents considered tolerance as equivalent to their mother's failure to act to eject the petitioner from the land. Thus –

> "Court: O sige, okay. Who are the other plaintiffs? Ngayon, ayon sa Nanay ninyo, pinayagan ba niyang magtayo ng bahay doon si Aurora Perez?
>
> Miss Go: Hindi po.
>
> Court: Hindi niya pinayagan?
>
> Miss Go: Basta nakita na lamang po niya na nakatayo na yung bahay.
>
> Court: Yung bang ibang mga kapatid, ganon din ba and sinasabi? Sino ang iba pang mga kapatid? Pinayagan ba ng Nanay ninyo na magtayo ng bahay si Aurora Perez?

> Answer: Hindi po.
>
> Court: Yun din ba ang sagot ng ibang mga kapatid?
>
> Answer: Opo, hindi po.
>
> Court: Hindi pinayagan ang ibig sabihin. There is no tolerance there, Attorney.
>
> Atty. Soriano: May we comment Your Honor?
>
> Court: Teka muna.
>
> Atty. Solidum: I was made to understand that at the time the mother was still living, in a way, she tolerated the stay of the defendants when she did not at the time take steps to have the defendant ejected from the premises, and from that, the late Mrs. Go tolerated the stay of the defendants in the premises." (t.s.n., pp. 5-7, Feb. 29, 1996).

The participants above knew what they were talking about, the possession of the lot. It is idle to distinguish between the building of a house and the occupancy of the lot, for a house cannot be built without occupancy of the lot.

For that matter, if the "Miss Go" who appeared at the pre-trial was the same person as Luzviminda Go who executed the affidavit partially quoted above, her statement that her mother simply found the petitioner's house standing on the lot in question, runs counter to her statement in the affidavit that her mother tolerated the "Attorney's" occupancy of a house on the said lot.

Consequently, we agree with the Metropolitan Trial Court that the occupancy of the petitioner was not a matter of tolerance on the part of the respondents. This is not to say that the petitioner is entitled to remain in the subject land. It is only that the respondents can no longer avail of the remedy of forcible entry or unlawful detainer. However, they may still bring the other appropriate vindicatory actions. That is why the Metropolitan Trial Court dismissed their complaint without prejudice."

Hence, the present petition, where petitioners assign for resolution the main issue of: "whether an ejectment action is the appropriate judicial remedy for the recovery of possession of subject property in the instant case or whether a "vindicatory action" is the proper remedy for such recovery; " with the following subsidiary issues: 1. whether the instant action for ejectment was commenced within the jurisdictional one year period provided for in Section 1, Rule 70 of the Rules of Court.; 2. whether private respondent's occupancy of the property in controversy, prior to the demand to vacate, was by mere tolerance of petitioners' mother and by their own tolerance; 3. whether the Court of Appeals properly applied the hearsay rule in rejecting the submission that private respondent's occupancy was merely tolerated; 4. whether or not petitioners' certificate of title may be collaterally attacked; 5. whether private respondent can validly claim reimbursement for her alleged expenses on improvements made on the subject property; and, 6. whether petitioners are entitled to reasonable compensation for the use and occupancy of subject property by the private respondent.

The Court finds no cogent reason to disturb the findings and conclusions of the Court of Appeals in its questioned decision.

Ejectment cases are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property. Title is not involved, that is why it is a special civil action with a special procedure.[5] The only issue to be resolved in ejectment cases is the question as to who is entitled to the physical or material possession of the premises or possession de facto.[6] The summary actions for forcible entry and unlawful detainer are distinguished from each other as follows:

> "Forcible entry and unlawful detainer cases are two distinct actions defined in Section 1, Rule 70 of the Rules of Court. In forcible entry, one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession de facto. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess, hence the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession."
>
> "What determines the cause of action is the nature of defendant's entry into the land. If the entry is illegal, then the action which may be filed against the intruder within one year therefrom is forcible entry. If, on the other hand, the entry is legal but the possession thereafter became illegal, the case is one of unlawful detainer which must be filed within one year from the date of the last demand."[7]

The complaint subject of this case was captioned as "ejectment." From a reading of the allegations of the complaint quoted above, we find that the action is one for unlawful detainer. 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. According to them, they availed of the appropriate judicial remedy pursuant to Section I, Rule 70 of the Revised Rules of Court and that the complaint which was filed on June 27, 1995, was filed within one year from date of the demand to vacate on December, 1994.

It is settled that one whose stay is merely tolerated becomes a deforciant illegally occupying the land the moment he is required to leave.[8] It is essential in unlawful detainer cases of this kind, 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.[9] 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. On this point, we defer to the findings of the MTC as affirmed by the Court of Appeals. The Supreme Court does not review findings of facts by the Court of Appeals unless the findings of the appellate court are mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the trial court of origin.[10] Here, we find no infirmity or anything reversible in the aforesaid findings arrived at by both the MTC and the Court of Appeals.

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. Per the affidavit of Luzviminda Go, she saw the defendant for the first time in the subject lot in 1977 residing at the same house which was previously used by a certain "Attorney" who was allegedly allowed by her mother to stay thereat. During the pre-trial conference, petitioner Ms. Go confirmed that their mother did not allow defendant to stay in the subject lot and that they just saw the house of defendant standing thereon. Clearly, defendant's entry into the land was effected clandestinely, without the knowledge of the owners, consequently, it is categorized as possession by stealth[11] which is forcible entry. As explained in Sarona vs. Villegas, cited in Muñoz vs. Court of Appeals[12] 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, to wit:

> "But will this rule as to tolerance hold true in a case where there was forcible entry at the start, but the lawful possessor did not attempt to oust the intruder for over one year, and only thereafter filed forcible entry suit

> following demand to vacate?
>
> xxx.
>
> 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 for 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.
>
> It is well to remember that after the lapse of the one year period, suit must be started in the Court of First Instance in an accion publiciana.

The RTC erred in treating the complaint as a case of forcible entry and ruling in favor of petitioners since there was no allegation and proof of prior physical possession by the petitioners. In forcible entry, the complaint must allege that one in physical possession of a land or building has been deprived of that possession by another through force, intimidation, threat, strategy or stealth. Moreover, the action should be brought with in one year from date of forcible entry. In the case at bar, petitioners came to know that defendant was occupying the subject land way back in 1977, but filed the case only in 1995.

We agree with the Court of Appeals that if petitioners are indeed the owners of the subject lot and were unlawfully deprived of the real right of possession, they should present their claim before the regional trial court in an accion publiciana or an accion reivindicatoria, and not before the metropolitan trial court in a summary proceeding of unlawful detainer or forcible entry. For even if one is the owner of the property, the possession thereof cannot be wrested from another who had been in the physical or material possession of the same for more than one year by resorting to a summary action for ejectment."[13] In view of the foregoing, it is unnecessary to pass upon the other issues raised in the petition at bar.

WHEREFORE, the petition is DENIED and the judgment of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Penned by Justice Hector L. Hofileña with the concurrence of Justices Jorge S. Imperial and Omar U. Amin.

[2] Original Records, pp. 1-3.

[3] Ibid., pp. 12-16.

[4] Rollo, p. 88.

[5] Guballa vs. Court of Appeals, 168 SCRA 518 (1988).

[6] University Physicians Services, Inc. vs. Court of Appeals, 233 SCRA 86 (1994).

[7] Sarmiento vs. Court of Appeals, 250 SCRA 108 (1995).

[8] Odsigue vs. Court of Appeals, 233 SCRA 626 (1994).

[9] Ibid., p. 116.

[10] Ramirez vs. Court of Appeals, 294 SCRA 512 (1998).

[11] Art. 537, Civil Code of the Philippines:

> Art. 537. Acts merely tolerated, and those executed clandestinely and without the knowledge of the possessor of a thing, or by violence do not affect possession.

[12] 224 SCRA 216 (1992).

[13] Sarmiento case, supra.

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