

COLITO T. PAJUYO, PETITIONER, VS. COURT OF APPEALS AND EDDIE GUEVARRA, RESPONDENTS.

G.R. No. 146364. June 03, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before us is a petition for review[1] of the 21 June 2000 Decision[2] and 14 December 2000 Resolution of the Court of Appeals in CA-G.R. SP No. 43129. The Court of Appeals set aside the 11 November 1996 decision[3] of the Regional Trial Court of Quezon City, Branch 81,[4] affirming the 15 December 1995 decision[5] of the Metropolitan Trial Court of Quezon City, Branch 31.[6]

The Antecedents

In June 1979, petitioner Colito T. Pajuyo (“Pajuyo”) paid P400 to a certain Pedro Perez for the rights over a 250-square meter lot in Barrio Payatas, Quezon City. Pajuyo then constructed a house made of light materials on the lot. Pajuyo and his family lived in the house from 1979 to 7 December 1985.

On 8 December 1985, Pajuyo and private respondent Eddie Guevarra (“Guevarra”) executed a Kasunduan or agreement. Pajuyo, as owner of the house, allowed Guevarra to live in the house for free provided Guevarra would maintain the cleanliness and orderliness of the house. Guevarra promised that he would voluntarily vacate the premises on Pajuyo’s demand.

In September 1994, Pajuyo informed Guevarra of his need of the house and demanded that Guevarra vacate the house. Guevarra refused.

Pajuyo filed an ejectment case against Guevarra with the Metropolitan Trial Court of Quezon City, Branch 31 (“MTC”).

In his Answer, Guevarra claimed that Pajuyo had no valid title or right of possession over the lot where the house stands because the lot is within the 150 hectares set aside by Proclamation No. 137 for socialized housing. Guevarra pointed out that from December 1985 to September 1994, Pajuyo did not show up or communicate with him. Guevarra insisted that neither he nor Pajuyo has valid title to the lot.

On 15 December 1995, the MTC rendered its decision in favor of Pajuyo. The dispositive portion of the MTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered for the plaintiff and against defendant, ordering the latter to:

A)

vacate the house and lot occupied by the defendant or any other person or persons claiming any right under

him;

B) pay unto plaintiff the sum of THREE HUNDRED PESOS (P300.00) monthly as reasonable compensation for the use of the premises starting from the last demand;

C) pay plaintiff the sum of P3,000.00 as and by way of attorney's fees; and

D) pay the cost of suit.

SO ORDERED.[7]

Aggrieved, Guevarra appealed to the Regional Trial Court of Quezon City, Branch 81 ("RTC").

On 11 November 1996, the RTC affirmed the MTC decision. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, the Court finds no reversible error in the decision appealed from, being in accord with the law and evidence presented, and the same is hereby affirmed en toto.

SO ORDERED.[8]

Guevarra received the RTC decision on 29 November 1996. Guevarra had only until 14 December 1996 to file his appeal with the Court of Appeals. Instead of filing his appeal with the Court of Appeals, Guevarra filed with the Supreme Court a "Motion for Extension of Time to File Appeal by Certiorari Based on Rule 42" ("motion for extension"). Guevarra theorized that his appeal raised pure questions of law. The Receiving Clerk of the Supreme Court received the motion for extension on 13 December 1996 or one day before the right to appeal expired.

On 3 January 1997, Guevarra filed his petition for review with the Supreme Court.

On 8 January 1997, the First Division of the Supreme Court issued a Resolution[9] referring the motion for extension to the Court of Appeals which has concurrent jurisdiction over the case. The case presented no special and important matter for the Supreme Court to take cognizance of at the first instance.

On 28 January 1997, the Thirteenth Division of the Court of Appeals issued a Resolution[10] granting the motion for extension conditioned on the timeliness of the filing of the motion.

On 27 February 1997, the Court of Appeals ordered Pajuyo to comment on Guevara's petition for review. On 11 April 1997, Pajuyo filed his Comment.

On 21 June 2000, the Court of Appeals issued its decision reversing the RTC decision. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the assailed Decision of the court a quo in Civil Case No. Q-96-26943 is REVERSED and SET ASIDE; and it is hereby declared that the ejectment case filed against defendant-appellant is without factual and legal basis.

SO ORDERED.[11]

Pajuyo filed a motion for reconsideration of the decision. Pajuyo pointed out that the Court of Appeals should have dismissed outright Guevarra's petition for review because it was filed out of time. Moreover, it was Guevarra's counsel and not Guevarra who signed the certification against forum-shopping.

On 14 December 2000, the Court of Appeals issued a resolution denying Pajuyo's motion for reconsideration. The dispositive portion of the resolution reads:

WHEREFORE, for lack of merit, the motion for reconsideration is hereby DENIED. No costs.

SO ORDERED.[12]

The Ruling of the MTC

The MTC ruled that the subject of the agreement between Pajuyo and Guevarra is the house and not the lot. Pajuyo is the owner of the house, and he allowed Guevarra to use the house only by tolerance. Thus, Guevarra's refusal to vacate the house on Pajuyo's demand made Guevarra's continued possession of the house illegal.

The Ruling of the RTC

The RTC upheld the Kasunduan, which established the landlord and tenant relationship between Pajuyo and Guevarra. The terms of the Kasunduan bound Guevarra to return possession of the house on demand.

The RTC rejected Guevarra's claim of a better right under Proclamation No. 137, the Revised National Government Center Housing Project Code of Policies and other pertinent laws. In an ejectment suit, the RTC has no power to decide Guevarra's rights under these laws. The RTC declared that in an ejectment case, the only issue for resolution is material or physical possession, not ownership.

The Ruling of the Court of Appeals

The Court of Appeals declared that Pajuyo and Guevarra are squatters. Pajuyo and Guevarra illegally occupied the contested lot which the government owned.

Perez, the person from whom Pajuyo acquired his rights, was also a squatter. Perez had no right or title over the lot because it is public land. The assignment of rights between Perez and Pajuyo, and the Kasunduan between Pajuyo and Guevarra, did not have any legal effect. Pajuyo and Guevarra are in *pari delicto* or in equal fault. The court will leave them where they are.

The Court of Appeals reversed the MTC and RTC rulings, which held that the Kasunduan between Pajuyo and Guevarra created a legal tie akin to that of a landlord and tenant relationship. The Court of Appeals ruled that the Kasunduan is not a lease contract but a *commodatum* because the agreement is not for a price certain.

Since Pajuyo admitted that he resurfaced only in 1994 to claim the property, the appellate court held that Guevarra has a better right over the property under Proclamation No. 137. President Corazon C. Aquino ("President Aquino") issued Proclamation No. 137 on 7 September 1987. At that time, Guevarra was in physical possession of the property. Under Article VI of the Code of Policies Beneficiary Selection and Disposition of Homelots and Structures in the National Housing Project ("the Code"), the actual occupant or caretaker of the lot shall have first priority as beneficiary of the project. The Court of Appeals concluded that Guevarra is first in the hierarchy of priority.

In denying Pajuyo's motion for reconsideration, the appellate court debunked Pajuyo's claim that Guevarra filed his motion for extension beyond the period to appeal.

The Court of Appeals pointed out that Guevarra's motion for extension filed before the Supreme Court was stamped "13 December 1996 at 4:09 PM" by the Supreme Court's Receiving Clerk. The Court of Appeals concluded that the motion for extension bore a date, contrary to Pajuyo's claim that the motion for extension was undated. Guevarra filed the motion for extension on time on 13 December 1996 since he filed the motion one day before the expiration of the reglementary period on 14 December 1996. Thus, the motion for extension properly complied with the condition imposed by the Court of Appeals in its 28 January 1997 Resolution. The Court of Appeals explained that the thirty-day extension to file the petition for review was deemed granted because of such compliance.

The Court of Appeals rejected Pajuyo's argument that the appellate court should have dismissed the petition for review because it was Guevarra's counsel and not Guevarra who signed the certification against forum-shopping. The Court of Appeals pointed out that Pajuyo did not raise this issue in his Comment. The Court of Appeals held that Pajuyo could not now seek the dismissal of the case after he had extensively argued on the merits of the case. This technicality, the appellate court opined, was clearly an afterthought.

The Issues

Pajuyo raises the following issues for resolution:

WHETHER THE COURT OF APPEALS ERRED OR ABUSED ITS AUTHORITY AND DISCRETION TANTAMOUNT TO LACK OF JURISDICTION:

1)

in GRANTING, instead of denying, Private Respondent's Motion for an Extension of thirty days to file petition for review at the time when there was no more period to extend as the decision of the Regional Trial Court had already become final and executory.

2)

in giving due course, instead of dismissing, private respondent's Petition for Review even though the certification against forum-shopping was signed only by counsel instead of by petitioner himself.

3)

in ruling that the Kasunduan voluntarily entered into by the parties was in fact a commodatum, instead of a Contract of Lease as found by the Metropolitan Trial Court and in holding that "the ejectment case filed against defendant-appellant is without legal and factual basis".

4)

in reversing and setting aside the Decision of the Regional Trial Court in Civil Case No. Q-96-26943 and in holding that the parties are in *pari delicto* being both squatters, therefore, illegal occupants of the contested parcel of land.

5)

in deciding the unlawful detainer case based on the so-called Code of Policies of the National Government Center Housing Project instead of deciding the same under the Kasunduan voluntarily executed by the parties, the terms and conditions of which are the laws between themselves.[13]

The Ruling of the Court

The procedural issues Pajuyo is raising are baseless. However, we find merit in the substantive issues Pajuyo is submitting for resolution.

Procedural Issues

Pajuyo insists that the Court of Appeals should have dismissed outright Guevarra's petition for review because the RTC decision had already become final and executory when the appellate court acted on Guevarra's motion for extension to file the petition. Pajuyo points out that Guevarra had only one day before the expiry of his period to appeal the RTC decision. Instead of filing the petition for review with the Court of Appeals, Guevarra filed with this Court an undated motion for extension of 30 days to file a petition for review. This Court merely referred the motion to the Court of Appeals. Pajuyo believes that the filing of the motion for extension with this

Court did not toll the running of the period to perfect the appeal. Hence, when the Court of Appeals received the motion, the period to appeal had already expired.

We are not persuaded.

Decisions of the regional trial courts in the exercise of their appellate jurisdiction are appealable to the Court of Appeals by petition for review in cases involving questions of fact or mixed questions of fact and law.[14] Decisions of the regional trial courts involving pure questions of law are appealable directly to this Court by petition for review.[15] These modes of appeal are now embodied in Section 2, Rule 41 of the 1997 Rules of Civil Procedure.

Guevarra believed that his appeal of the RTC decision involved only questions of law. Guevarra thus filed his motion for extension to file petition for review before this Court on 14 December 1996. On 3 January 1997, Guevarra then filed his petition for review with this Court. A perusal of Guevarra's petition for review gives the impression that the issues he raised were pure questions of law. There is a question of law when the doubt or difference is on what the law is on a certain state of facts.[16] There is a question of fact when the doubt or difference is on the truth or falsity of the facts alleged.[17]

In his petition for review before this Court, Guevarra no longer disputed the facts. Guevarra's petition for review raised these questions: (1) Do ejectment cases pertain only to possession of a structure, and not the lot on which the structure stands? (2) Does a suit by a squatter against a fellow squatter constitute a valid case for ejectment? (3) Should a Presidential Proclamation governing the lot on which a squatter's structure stands be considered in an ejectment suit filed by the owner of the structure?

These questions call for the evaluation of the rights of the parties under the law on ejectment and the Presidential Proclamation. At first glance, the questions Guevarra raised appeared purely legal. However, some factual questions still have to be resolved because they have a bearing on the legal questions raised in the petition for review. These factual matters refer to the metes and bounds of the disputed property and the application of Guevarra as beneficiary of Proclamation No. 137.

The Court of Appeals has the power to grant an extension of time to file a petition for review. In *Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court*,^[18] we declared that the Court of Appeals could grant extension of time in appeals by petition for review. In *Liboro v. Court of Appeals*,^[19] we clarified that the prohibition against granting an extension of time applies only in a case where ordinary appeal is perfected by a mere notice of appeal. The prohibition does not apply in a petition for review where the pleading needs verification. A petition for review, unlike an ordinary appeal, requires preparation and research to present a persuasive position.^[20] The drafting of the petition for review entails more time and effort than filing a notice of appeal.^[21] Hence, the Court of Appeals may allow an extension of time to file a petition for review.

In the more recent case of *Commissioner of Internal Revenue v. Court of Appeals*,^[22] we held that *Liboro's* clarification of *Lacsamana* is consistent with the Revised Internal Rules of the Court of Appeals and Supreme Court Circular No. 1-91. They all allow an extension of time for filing petitions for review with the Court of Appeals. The extension, however, should be limited to only fifteen days save in exceptionally meritorious cases where the Court of Appeals may grant a longer period.

A judgment becomes "final and executory" by operation of law. Finality of judgment becomes a fact on the lapse of the reglementary period to appeal if no appeal is perfected.^[23] The RTC decision could not have gained finality because the Court of Appeals granted the 30-day extension to Guevarra.

The Court of Appeals did not commit grave abuse of discretion when it approved Guevarra's motion for

extension. The Court of Appeals gave due course to the motion for extension because it complied with the condition set by the appellate court in its resolution dated 28 January 1997. The resolution stated that the Court of Appeals would only give due course to the motion for extension if filed on time. The motion for extension met this condition.

The material dates to consider in determining the timeliness of the filing of the motion for extension are (1) the date of receipt of the judgment or final order or resolution subject of the petition, and (2) the date of filing of the motion for extension.[24] It is the date of the filing of the motion or pleading, and not the date of execution, that determines the timeliness of the filing of that motion or pleading. Thus, even if the motion for extension bears no date, the date of filing stamped on it is the reckoning point for determining the timeliness of its filing.

Guevarra had until 14 December 1996 to file an appeal from the RTC decision. Guevarra filed his motion for extension before this Court on 13 December 1996, the date stamped by this Court's Receiving Clerk on the motion for extension. Clearly, Guevarra filed the motion for extension exactly one day before the lapse of the reglementary period to appeal.

Assuming that the Court of Appeals should have dismissed Guevarra's appeal on technical grounds, Pajuyo did not ask the appellate court to deny the motion for extension and dismiss the petition for review at the earliest opportunity. Instead, Pajuyo vigorously discussed the merits of the case. It was only when the Court of Appeals ruled in Guevarra's favor that Pajuyo raised the procedural issues against Guevarra's petition for review.

A party who, after voluntarily submitting a dispute for resolution, receives an adverse decision on the merits, is estopped from attacking the jurisdiction of the court.[25] Estoppel sets in not because the judgment of the court is a valid and conclusive adjudication, but because the practice of attacking the court's jurisdiction after voluntarily submitting to it is against public policy.[26]

In his Comment before the Court of Appeals, Pajuyo also failed to discuss Guevarra's failure to sign the certification against forum shopping. Instead, Pajuyo harped on Guevarra's counsel signing the verification, claiming that the counsel's verification is insufficient since it is based only on "mere information."

A party's failure to sign the certification against forum shopping is different from the party's failure to sign personally the verification. The certificate of non-forum shopping must be signed by the party, and not by counsel.[27] The certification of counsel renders the petition defective.[28]

On the other hand, the requirement on verification of a pleading is a formal and not a jurisdictional requisite.[29] It is intended simply to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[30] The party need not sign the verification. A party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification.[31]

We agree with the Court of Appeals that the issue on the certificate against forum shopping was merely an afterthought. Pajuyo did not call the Court of Appeals' attention to this defect at the early stage of the proceedings. Pajuyo raised this procedural issue too late in the proceedings.

Absence of Title over the Disputed Property will not Divest the Courts of Jurisdiction to Resolve the Issue of Possession

Settled is the rule that the defendant's claim of ownership of the disputed property will not divest the inferior court of its jurisdiction over the ejectment case.[32] Even if the pleadings raise the issue of ownership, the court may pass on such issue to determine only the question of possession, especially if the ownership is inseparably

linked with the possession.[33] The adjudication on the issue of ownership is only provisional and will not bar an action between the same parties involving title to the land.[34] This doctrine is a necessary consequence of the nature of the two summary actions of ejectment, forcible entry and unlawful detainer, where the only issue for adjudication is the physical or material possession over the real property.[35]

In this case, what Guevarra raised before the courts was that he and Pajuyo are not the owners of the contested property and that they are mere squatters. Will the defense that the parties to the ejectment case are not the owners of the disputed lot allow the courts to renounce their jurisdiction over the case? The Court of Appeals believed so and held that it would just leave the parties where they are since they are *in pari delicto*.

We do not agree with the Court of Appeals.

Ownership or the right to possess arising from ownership is not at issue in an action for recovery of possession. The parties cannot present evidence to prove ownership or right to legal possession except to prove the nature of the possession when necessary to resolve the issue of physical possession.[36] The same is true when the defendant asserts the absence of title over the property. The absence of title over the contested lot is not a ground for the courts to withhold relief from the parties in an ejectment case.

The only question that the courts must resolve in ejectment proceedings is - who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*.[37] It does not even matter if a party's title to the property is questionable,[38] or when both parties intruded into public land and their applications to own the land have yet to be approved by the proper government agency.[39] Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror.[40] Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.

Thus, a party who can prove prior possession can recover such possession even against the owner himself.[41] Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him.[42] To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.

In *Pitargue v. Sorilla*,[43] the government owned the land in dispute. The government did not authorize either the plaintiff or the defendant in the case of forcible entry case to occupy the land. The plaintiff had prior possession and had already introduced improvements on the public land. The plaintiff had a pending application for the land with the Bureau of Lands when the defendant ousted him from possession. The plaintiff filed the action of forcible entry against the defendant. The government was not a party in the case of forcible entry.

The defendant questioned the jurisdiction of the courts to settle the issue of possession because while the application of the plaintiff was still pending, title remained with the government, and the Bureau of Public Lands had jurisdiction over the case. We disagreed with the defendant. We ruled that courts have jurisdiction to entertain ejectment suits even before the resolution of the application. The plaintiff, by priority of his application and of his entry, acquired prior physical possession over the public land applied for as against other private claimants. That prior physical possession enjoys legal protection against other private claimants because only a court can take away such physical possession in an ejectment case.

While the Court did not brand the plaintiff and the defendant in *Pitargue*[44] as squatters, strictly speaking, their entry into the disputed land was illegal. Both the plaintiff and defendant entered the public land without the owner's permission. Title to the land remained with the government because it had not awarded to anyone ownership of the contested public land. Both the plaintiff and the defendant were in effect squatting on

government property. Yet, we upheld the courts' jurisdiction to resolve the issue of possession even if the plaintiff and the defendant in the ejectment case did not have any title over the contested land.

Courts must not abdicate their jurisdiction to resolve the issue of physical possession because of the public need to preserve the basic policy behind the summary actions of forcible entry and unlawful detainer. The underlying philosophy behind ejectment suits is to prevent breach of the peace and criminal disorder and to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his.[45] The party deprived of possession must not take the law into his own hands.[46] Ejectment proceedings are summary in nature so the authorities can settle speedily actions to recover possession because of the overriding need to quell social disturbances.[47]

We further explained in *Pitargue* the greater interest that is at stake in actions for recovery of possession. We made the following pronouncements in *Pitargue*:

The question that is before this Court is: Are courts without jurisdiction to take cognizance of possessory actions involving these public lands before final award is made by the Lands Department, and before title is given any of the conflicting claimants? It is one of utmost importance, as there are public lands everywhere and there are thousands of settlers, especially in newly opened regions. It also involves a matter of policy, as it requires the determination of the respective authorities and functions of two coordinate branches of the Government in connection with public land conflicts.

Our problem is made simple by the fact that under the Civil Code, either in the old, which was in force in this country before the American occupation, or in the new, we have a possessory action, the aim and purpose of which is the recovery of the physical possession of real property, irrespective of the question as to who has the title thereto. Under the Spanish Civil Code we had the *accion interdictal*, a summary proceeding which could be brought within one year from dispossession (*Roman Catholic Bishop of Cebu vs. Mangaron*, 6 Phil. 286, 291); and as early as October 1, 1901, upon the enactment of the Code of Civil Procedure (Act No. 190 of the Philippine Commission) we implanted the common law action of forcible entry (section 80 of Act No. 190), the object of which has been stated by this Court to be "to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the court to assert their claims." (*Supia and Batioco vs. Quintero and Ayala*, 59 Phil. 312, 314.) So before the enactment of the first Public Land Act (Act No. 926) the action of forcible entry was already available in the courts of the country. So the question to be resolved is, Did the Legislature intend, when it vested the power and authority to alienate and dispose of the public lands in the Lands Department, to exclude the courts from entertaining the possessory action of forcible entry between rival claimants or occupants of any land before award thereof to any of the parties? Did Congress intend that the lands applied for, or all public lands for that matter, be removed from the jurisdiction of the judicial Branch of the Government, so that any troubles arising therefrom, or any breaches of the peace or disorders caused by rival claimants, could be inquired into only by the Lands Department to the exclusion of the courts? The answer to this question seems to us evident. The Lands Department does not have the means to police public lands; neither does it have the means to prevent disorders arising therefrom, or contain breaches of the peace among settlers; or to pass promptly upon conflicts of possession. Then its power is clearly limited to disposition and alienation, and while it may decide conflicts of possession in order to make proper award, the settlement of conflicts of possession which is recognized in the court herein has another ultimate purpose, i.e., the protection of actual possessors and occupants with a view to the prevention of breaches of the peace. The power to dispose and alienate could not have been intended to include the power to prevent or settle disorders or breaches of the peace among rival settlers or claimants prior to the final award. As to this, therefore, the corresponding branches of the Government must continue to exercise power and jurisdiction within the limits of their respective functions. The vesting of the Lands Department with authority to administer, dispose, and alienate public lands, therefore, must not be understood as depriving the other

branches of the Government of the exercise of the respective functions or powers thereon, such as the authority to stop disorders and quell breaches of the peace by the police, the authority on the part of the courts to take jurisdiction over possessory actions arising therefrom not involving, directly or indirectly, alienation and disposition.

Our attention has been called to a principle enunciated in American courts to the effect that courts have no jurisdiction to determine the rights of claimants to public lands, and that until the disposition of the land has passed from the control of the Federal Government, the courts will not interfere with the administration of matters concerning the same. (50 C. J. 1093-1094.) We have no quarrel with this principle. The determination of the respective rights of rival claimants to public lands is different from the determination of who has the actual physical possession or occupation with a view to protecting the same and preventing disorder and breaches of the peace. A judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, can never be “prejudicial interference” with the disposition or alienation of public lands. On the other hand, if courts were deprived of jurisdiction of cases involving conflicts of possession, that threat of judicial action against breaches of the peace committed on public lands would be eliminated, and a state of lawlessness would probably be produced between applicants, occupants or squatters, where force or might, not right or justice, would rule.

It must be borne in mind that the action that would be used to solve conflicts of possession between rivals or conflicting applicants or claimants would be no other than that of forcible entry. This action, both in England and the United States and in our jurisdiction, is a summary and expeditious remedy whereby one in peaceful and quiet possession may recover the possession of which he has been deprived by a stronger hand, by violence or terror; its ultimate object being to prevent breach of the peace and criminal disorder. (Supia and Batioco vs. Quintero and Ayala, 59 Phil. 312, 314.) The basis of the remedy is mere possession as a fact, of physical possession, not a legal possession. (Mediran vs. Villanueva, 37 Phil. 752.) The title or right to possession is never in issue in an action of forcible entry; as a matter of fact, evidence thereof is expressly banned, except to prove the nature of the possession. (Second 4, Rule 72, Rules of Court.) With this nature of the action in mind, by no stretch of the imagination can conclusion be arrived at that the use of the remedy in the courts of justice would constitute an interference with the alienation, disposition, and control of public lands. To limit ourselves to the case at bar can it be pretended at all that its result would in any way interfere with the manner of the alienation or disposition of the land contested? On the contrary, it would facilitate adjudication, for the question of priority of possession having been decided in a final manner by the courts, said question need no longer waste the time of the land officers making the adjudication or award. (Emphasis ours)

The Principle of *Pari Delicto* is not Applicable to Ejectment Cases

The Court of Appeals erroneously applied the principle of *pari delicto* to this case.

Articles 1411 and 1412 of the Civil Code^[48] embody the principle of *pari delicto*. We explained the principle of *pari delicto* in these words:

The rule of *pari delicto* is expressed in the maxims ‘*ex dolo malo non eritur actio*’ and ‘*in pari delicto potior est conditio defedentis.*’ The law will not aid either party to an illegal agreement. It leaves the parties where it finds them.^[49]

The application of the *pari delicto* principle is not absolute, as there are exceptions to its application. One of these exceptions is where the application of the *pari delicto* rule would violate well-established public policy.^[50]

In *Drilon v. Gaurana*,^[51] we reiterated the basic policy behind the summary actions of forcible entry and unlawful detainer. We held that:

It must be stated that the purpose of an action of forcible entry and detainer is that, regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by strong hand, violence or terror. In affording this remedy of restitution the object of the statute is to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims. This is the philosophy at the foundation of all these actions of forcible entry and detainer which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his.[52]

Clearly, the application of the principle of *pari delicto* to a case of ejectment between squatters is fraught with danger. To shut out relief to squatters on the ground of *pari delicto* would openly invite mayhem and lawlessness. A squatter would oust another squatter from possession of the lot that the latter had illegally occupied, emboldened by the knowledge that the courts would leave them where they are. Nothing would then stand in the way of the ousted squatter from re-claiming his prior possession at all cost.

Petty warfare over possession of properties is precisely what ejectment cases or actions for recovery of possession seek to prevent.[53] Even the owner who has title over the disputed property cannot take the law into his own hands to regain possession of his property. The owner must go to court.

Courts must resolve the issue of possession even if the parties to the ejectment suit are squatters. The determination of priority and superiority of possession is a serious and urgent matter that cannot be left to the squatters to decide. To do so would make squatters receive better treatment under the law. The law restrains property owners from taking the law into their own hands. However, the principle of *pari delicto* as applied by the Court of Appeals would give squatters free rein to dispossess fellow squatters or violently retake possession of properties usurped from them. Courts should not leave squatters to their own devices in cases involving recovery of possession.

Possession is the only Issue for Resolution in an Ejectment Case

The case for review before the Court of Appeals was a simple case of ejectment. The Court of Appeals refused to rule on the issue of physical possession. Nevertheless, the appellate court held that the pivotal issue in this case is who between Pajuyo and Guevarra has the “priority right as beneficiary of the contested land under Proclamation No. 137.”[54] According to the Court of Appeals, Guevarra enjoys preferential right under Proclamation No. 137 because Article VI of the Code declares that the actual occupant or caretaker is the one qualified to apply for socialized housing.

The ruling of the Court of Appeals has no factual and legal basis.

First. Guevarra did not present evidence to show that the contested lot is part of a relocation site under Proclamation No. 137. Proclamation No. 137 laid down the metes and bounds of the land that it declared open for disposition to bona fide residents.

The records do not show that the contested lot is within the land specified by Proclamation No. 137. Guevarra had the burden to prove that the disputed lot is within the coverage of Proclamation No. 137. He failed to do so.

Second. The Court of Appeals should not have given credence to Guevarra’s unsubstantiated claim that he is the beneficiary of Proclamation No. 137. Guevarra merely alleged that in the survey the project administrator conducted, he and not Pajuyo appeared as the actual occupant of the lot.

There is no proof that Guevarra actually availed of the benefits of Proclamation No. 137. Pajuyo allowed

Guevarra to occupy the disputed property in 1985. President Aquino signed Proclamation No. 137 into law on 11 March 1986. Pajuyo made his earliest demand for Guevarra to vacate the property in September 1994.

During the time that Guevarra temporarily held the property up to the time that Proclamation No. 137 allegedly segregated the disputed lot, Guevarra never applied as beneficiary of Proclamation No. 137. Even when Guevarra already knew that Pajuyo was reclaiming possession of the property, Guevarra did not take any step to comply with the requirements of Proclamation No. 137.

Third. Even assuming that the disputed lot is within the coverage of Proclamation No. 137 and Guevarra has a pending application over the lot, courts should still assume jurisdiction and resolve the issue of possession. However, the jurisdiction of the courts would be limited to the issue of physical possession only.

In *Pitargue*,^[55] we ruled that courts have jurisdiction over possessory actions involving public land to determine the issue of physical possession. The determination of the respective rights of rival claimants to public land is, however, distinct from the determination of who has the actual physical possession or who has a better right of physical possession.^[56] The administrative disposition and alienation of public lands should be threshed out in the proper government agency.^[57]

The Court of Appeals' determination of Pajuyo and Guevarra's rights under Proclamation No. 137 was premature. Pajuyo and Guevarra were at most merely potential beneficiaries of the law. Courts should not preempt the decision of the administrative agency mandated by law to determine the qualifications of applicants for the acquisition of public lands. Instead, courts should expeditiously resolve the issue of physical possession in ejectment cases to prevent disorder and breaches of peace.^[58]

Pajuyo is Entitled to Physical Possession of the Disputed Property

Guevarra does not dispute Pajuyo's prior possession of the lot and ownership of the house built on it. Guevarra expressly admitted the existence and due execution of the *Kasunduan*. The *Kasunduan* reads:

Ako, si COL[I]TO PAJUYO, may-ari ng bahay at lote sa Bo. Payatas, Quezon City, ay nagbibigay pahintulot kay G. Eddie Guevarra, na pansamantalang manirahan sa nasabing bahay at lote ng "walang bayad." Kaugnay nito, kailangang panatilihin nila ang kalinisan at kaayusan ng bahay at lote.

Sa sandaling kailangan na namin ang bahay at lote, sila'y kusang aalis ng walang reklamo.

Based on the *Kasunduan*, Pajuyo permitted Guevarra to reside in the house and lot free of rent, but Guevarra was under obligation to maintain the premises in good condition. Guevarra promised to vacate the premises on Pajuyo's demand but Guevarra broke his promise and refused to heed Pajuyo's demand to vacate.

These facts make out a case for unlawful detainer. Unlawful detainer involves the withholding by a person from another of the possession of real property to which the latter is entitled after the expiration or termination of the former's right to hold possession under a contract, express or implied.^[59]

Where the plaintiff allows the defendant to use his property by tolerance without any contract, the defendant is necessarily bound by an implied promise that he will vacate on demand, failing which, an action for unlawful detainer will lie.^[60] The defendant's refusal to comply with the demand makes his continued possession of the property unlawful.^[61] The status of the defendant in such a case is similar to that of a lessee or tenant whose term of lease has expired but whose occupancy continues by tolerance of the owner.^[62]

This principle should apply with greater force in cases where a contract embodies the permission or tolerance to use the property. The *Kasunduan* expressly articulated Pajuyo's forbearance. Pajuyo did not require Guevarra to pay any rent but only to maintain the house and lot in good condition. Guevarra expressly vowed in the

Kasunduan that he would vacate the property on demand. Guevarra's refusal to comply with Pajuyo's demand to vacate made Guevarra's continued possession of the property unlawful.

We do not subscribe to the Court of Appeals' theory that the Kasunduan is one of commodatum.

In a contract of commodatum, one of the parties delivers to another something not consumable so that the latter may use the same for a certain time and return it.[63] An essential feature of commodatum is that it is gratuitous. Another feature of commodatum is that the use of the thing belonging to another is for a certain period.[64] Thus, the bailor cannot demand the return of the thing loaned until after expiration of the period stipulated, or after accomplishment of the use for which the commodatum is constituted.[65] If the bailor should have urgent need of the thing, he may demand its return for temporary use.[66] If the use of the thing is merely tolerated by the bailor, he can demand the return of the thing at will, in which case the contractual relation is called a precarium.[67] Under the Civil Code, precarium is a kind of commodatum.[68]

The Kasunduan reveals that the accommodation accorded by Pajuyo to Guevarra was not essentially gratuitous. While the Kasunduan did not require Guevarra to pay rent, it obligated him to maintain the property in good condition. The imposition of this obligation makes the Kasunduan a contract different from a commodatum. The effects of the Kasunduan are also different from that of a commodatum. Case law on ejectment has treated relationship based on tolerance as one that is akin to a landlord-tenant relationship where the withdrawal of permission would result in the termination of the lease.[69] The tenant's withholding of the property would then be unlawful. This is settled jurisprudence.

Even assuming that the relationship between Pajuyo and Guevarra is one of commodatum, Guevarra as bailee would still have the duty to turn over possession of the property to Pajuyo, the bailor. The obligation to deliver or to return the thing received attaches to contracts for safekeeping, or contracts of commission, administration and commodatum.[70] These contracts certainly involve the obligation to deliver or return the thing received.[71]

Guevarra turned his back on the Kasunduan on the sole ground that like him, Pajuyo is also a squatter. Squatters, Guevarra pointed out, cannot enter into a contract involving the land they illegally occupy. Guevarra insists that the contract is void.

Guevarra should know that there must be honor even between squatters. Guevarra freely entered into the Kasunduan. Guevarra cannot now impugn the Kasunduan after he had benefited from it. The Kasunduan binds Guevarra.

The Kasunduan is not void for purposes of determining who between Pajuyo and Guevarra has a right to physical possession of the contested property. The Kasunduan is the undeniable evidence of Guevarra's recognition of Pajuyo's better right of physical possession. Guevarra is clearly a possessor in bad faith. The absence of a contract would not yield a different result, as there would still be an implied promise to vacate.

Guevarra contends that there is "a pernicious evil that is sought to be avoided, and that is allowing an absentee squatter who (sic) makes (sic) a profit out of his illegal act." [72] Guevarra bases his argument on the preferential right given to the actual occupant or caretaker under Proclamation No. 137 on socialized housing.

We are not convinced.

Pajuyo did not profit from his arrangement with Guevarra because Guevarra stayed in the property without paying any rent. There is also no proof that Pajuyo is a professional squatter who rents out usurped properties to other squatters. Moreover, it is for the proper government agency to decide who between Pajuyo and Guevarra qualifies for socialized housing. The only issue that we are addressing is physical possession.

Prior possession is not always a condition sine qua non in ejectment.[73] This is one of the distinctions between forcible entry and unlawful detainer.[74] In forcible entry, the plaintiff is deprived of physical possession of his land or building by means of force, intimidation, threat, strategy or stealth. Thus, he must allege and prove prior possession.[75] But in unlawful detainer, the defendant unlawfully withholds possession after the expiration or termination of his right to possess under any contract, express or implied. In such a case, prior physical possession is not required.[76]

Pajuyo's withdrawal of his permission to Guevarra terminated the Kasunduan. Guevarra's transient right to possess the property ended as well. Moreover, it was Pajuyo who was in actual possession of the property because Guevarra had to seek Pajuyo's permission to temporarily hold the property and Guevarra had to follow the conditions set by Pajuyo in the Kasunduan. Control over the property still rested with Pajuyo and this is evidence of actual possession.

Pajuyo's absence did not affect his actual possession of the disputed property. Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession.[77] One may acquire possession not only by physical occupation, but also by the fact that a thing is subject to the action of one's will.[78] Actual or physical occupation is not always necessary.[79]

Ruling on Possession Does not Bind Title to the Land in Dispute

We are aware of our pronouncement in cases where we declared that "squatters and intruders who clandestinely enter into titled government property cannot, by such act, acquire any legal right to said property." [80] We made this declaration because the person who had title or who had the right to legal possession over the disputed property was a party in the ejectment suit and that party instituted the case against squatters or usurpers.

In this case, the owner of the land, which is the government, is not a party to the ejectment case. This case is between squatters. Had the government participated in this case, the courts could have evicted the contending squatters, Pajuyo and Guevarra.

Since the party that has title or a better right over the property is not impleaded in this case, we cannot evict on our own the parties. Such a ruling would discourage squatters from seeking the aid of the courts in settling the issue of physical possession. Stripping both the plaintiff and the defendant of possession just because they are squatters would have the same dangerous implications as the application of the principle of *pari delicto*. Squatters would then rather settle the issue of physical possession among themselves than seek relief from the courts if the plaintiff and defendant in the ejectment case would both stand to lose possession of the disputed property. This would subvert the policy underlying actions for recovery of possession.

Since Pajuyo has in his favor priority in time in holding the property, he is entitled to remain on the property until a person who has title or a better right lawfully ejects him. Guevarra is certainly not that person. The ruling in this case, however, does not preclude Pajuyo and Guevarra from introducing evidence and presenting arguments before the proper administrative agency to establish any right to which they may be entitled under the law.[81]

In no way should our ruling in this case be interpreted to condone squatting. The ruling on the issue of physical possession does not affect title to the property nor constitute a binding and conclusive adjudication on the merits on the issue of ownership.[82] The owner can still go to court to recover lawfully the property from the person who holds the property without legal title. Our ruling here does not diminish the power of government agencies, including local governments, to condemn, abate, remove or demolish illegal or unauthorized structures in accordance with existing laws.

Attorney's Fees and Rentals

The MTC and RTC failed to justify the award of P3,000 attorney's fees to Pajuyo. Attorney's fees as part of damages are awarded only in the instances enumerated in Article 2208 of the Civil Code.[83] Thus, the award of attorney's fees is the exception rather than the rule.[84] Attorney's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate.[85] We therefore delete the attorney's fees awarded to Pajuyo.

We sustain the P300 monthly rentals the MTC and RTC assessed against Guevarra. Guevarra did not dispute this factual finding of the two courts. We find the amount reasonable compensation to Pajuyo. The P300 monthly rental is counted from the last demand to vacate, which was on 16 February 1995.

WHEREFORE, we GRANT the petition. The Decision dated 21 June 2000 and Resolution dated 14 December 2000 of the Court of Appeals in CA-G.R. SP No. 43129 are SET ASIDE. The Decision dated 11 November 1996 of the Regional Trial Court of Quezon City, Branch 81 in Civil Case No. Q-96-26943, affirming the Decision dated 15 December 1995 of the Metropolitan Trial Court of Quezon City, Branch 31 in Civil Case No. 12432, is REINSTATED with MODIFICATION. The award of attorney's fees is deleted. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Court.

[2] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Quirino D. Abad Santos, Jr. and Romeo A. Brawner, concurring.

[3] Penned by Judge Wenceslao I. Agnir.

[4] Docketed as Civil Case No. Q-96-26943.

[5] Penned by Judge Mariano M. Singzon, Jr.

[6] Docketed as Civil Case No. 12432.

[7] Rollo, p. 41.

[8] Ibid., p. 49.

[9] Ibid., p. 221.

[10] Ibid., p. 224.

[11] Ibid., p. 60.

[12] Ibid., p. 73.

[13] Rollo, p. 134.

[14] *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, 358 Phil. 245 (1998).

[15] Ibid.

[16] Ibid.

[17] Ibid.

- [18] 227 Phil. 606 (1986).
- [19] G.R. No. 101132, 29 January 1993, 218 SCRA 193.
- [20] Ibid.
- [21] Ibid.
- [22] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 110003, 9 February 2001, 351 SCRA 436.
- [23] City of Manila v. Court of Appeals, G.R. No. 100626, 29 November 1991, 204 SCRA 362.
- [24] Castilex Industrial Corporation v. Vasquez, Jr., 378 Phil. 1009 (1999).
- [25] Refugia v. Court of Appeals, 327 Phil. 982 (1996).
- [26] Ibid.
- [27] Far Eastern Shipping Company v. Court of Appeals, 357 Phil. 703 (1998).
- [28] Ibid.
- [29] Buenaventura v. Uy, G.R. No. L-28156, 31 March 1987, 149 SCRA 220.
- [30] Ibid.
- [31] FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM, VOL.I, SIXTH REV. ED., 143.
- [32] Dizon v. Court of Appeals, 332 Phil. 429 (1996).
- [33] Ibid.
- [34] De Luna v. Court of Appeals, G.R. No. 94490, 6 August 1992, 212 SCRA 276.
- [35] Ibid.
- [36] Pitargue v. Sorilla, 92 Phil. 5 (1952); Dizon v. Court of Appeals, *supra* note 32; Section 16, Rule 70 of the 1997 Rules of Court.
- [37] Ibid.; Fige v. Court of Appeals, G.R. No. 107951, 30 June 1994, 233 SCRA 586; Oblea v. Court of Appeals, 313 Phil. 804 (1995).
- [38] Dizon v. Court of Appeals, *supra* note 32.
- [39] *Supra* note 36.
- [40] Drilon v. Gaurana, G.R. No. L-35482, 30 April 1987, 149 SCRA 342.
- [41] Rubio v. The Hon. Municipal Trial Court in Cities, 322 Phil. 179 (1996).
- [42] Ibid.
- [43] 92 Phil. 5 (1952).
- [44] Ibid.
- [45] Ibid.; Reynoso v. Court of Appeals, G.R. No. 49344, 23 February 1989, 170 SCRA 546; Aguilon v. Bohol, G.R. No. L-27169, 20 October 1977, 79 SCRA 482.
- [46] Ibid.

[47] Ibid.

[48] Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

Art.1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rule shall be observed:

(1)

When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2)

When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised to him. The other who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

[49] *Top-Weld Manufacturing, Inc. v. ECED S.A.*, G.R. No. L-44944, 9 August 1985, 138 SCRA 118.

[50] *Silagan v. Intermediate Appellate Court*, 274 Phil. 182 (1991).

[51] *Supra* note 40.

[52] Ibid.

[53] *Dizon v. Concina*, 141 Phil. 589 (1969); *Cine Ligaya v. Labrador*, 66 Phil. 659 (1938).

[54] *Rollo*, p. 54.

[55] *Supra* note 43.

[56] Ibid.; *Aguilon v. Bohol*, *supra* note 45; *Reynoso v. Court of Appeals*, *supra* note 45.

[57] *Reynoso v. Court of Appeals*, *supra* note 45.

[58] *Aguilon v. Bohol*, *supra* note 45.

[59] Section 1, Rule 70 of the 1964 Rules of Court.

[60] *Arcal v. Court of Appeals*, 348 Phil. 813 (1998).

[61] Ibid.

[62] Ibid.

[63] Art. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower.

[64] Pascual v. Mina, 20 Phil. 202 (1911).

[65] Art. 1946. The bailor cannot demand the return of the thing loaned till after the expiration of the period stipulated, or after the accomplishment of the use for which the commodatum has been constituted. However, if in the meantime, he should have urgent need of the thing, he may demand its return or temporary use.

In case of temporary use by the bailor, the contract of commodatum is suspended while the thing is in the possession of the bailor.

[66] Ibid.

[67] Art.1947. The bailor may demand the thing at will, and the contractual relation is called a precarium, in the following cases:

(1)

If neither the duration of the contract nor the use to which the thing loaned should be devoted, has been stipulated; or

(2) If the use of the thing is merely tolerated by the owner.

[68] ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. V, 448.

[69] Arcal v. Court of Appeals, supra note 60; Dakudao v. Consolacion, 207 Phil. 750 (1983); Calubayan v. Pascual, 128 Phil. 160 (1967).

[70] United States v. Camara, 28 Phil. 238 (1914).

[71] Ibid.

[72] Rollo, p. 87.

[73] Benitez v. Court of Appeals, G.R. No. 104828, 16 January 1997, 266 SCRA 242.

[74] Ibid.

[75] Ibid.

[76] Ibid.

[77] Dela Rosa v. Carlos, G.R. No. 147549, 23 October 2003.

[78] Benitez v. Court of Appeals, supra note 73.

[79] Ibid.

[80] Caballero v. Court of Appeals, G.R. No. 59888, 29 January 1993, 218 SCRA 56; Florendo, Jr. v. Coloma, G.R. No. L-60544, 19 May 1984, 214 SCRA 268.

[81] Florendo, Jr. v. Coloma, supra note 80.

[82] Dizon v. Court of Appeals, supra note 32; Section 7, Rule 70 of the 1964 Rules of Court.

[83] Padillo v. Court of Appeals, 442 Phil. 344 (2001).

[84] Ibid.

[85] Ibid.

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