GERMELINA TORRES RACAZA AND BERNALDITA TORRES PARAS, PETITIONERS, VS. ERNESTO GOZUM, RESPONDENT.

G.R. NO. 148759. June 08, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioners Germelina Torres Racaza and Bernaldita Torres Paras seek the nullification of the decision[2] dated July 12, 2000 as well as the resolution[3] dated June 28, 2001 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 61227 which reversed and set aside the decision[4] dated September 30, 1998 of the Regional Trial Court (RTC), Branch 158 of Pasig City, consequently dismissing the complaint for accion publiciana filed by petitioners against respondent Ernesto Gozum.

The antecedents of this case are as follows:

> The plaintiffs are the registered co-owners of a parcel of land under Transfer Certificate of Title No. PT-92411 situated at Amang Rodriguez Avenue, Santolan, Pasig City. Standing on this lot is a 2-storey, 3-door apartment. The property was formerly owned by the father of the plaintiffs, the late Carlos Torres.
>
> In 1981, defendant Ernesto Gozum occupied the back portion of the property on a P3,500.00 monthly rental and continued to occupy the same even after the death of Carlos Torres on December 26, 1993.
>
> On July 1, 1995, plaintiffs sent Gozum a letter of demand to vacate [the] premises (Annex G, Complaint). After a failed barangay conciliation, on November 24, 1995, plaintiffs commenced an ejectment case [with the Metropolitan Trial Court] against Gozum. The case was, however, dismissed due to [a] technicality.
>
> Almost two (2) years thereafter, on May 27, 1997, plaintiffs sent anew a formal demand letter to vacate on the ground that the verbal contract of lease over the property had already expired sometime in July 1995, and the same has not been renewed and since then, defendant had discontinued paying the monthly rentals of P3,500.00. When this latter demand was not heeded, on June 4, 1997, the present complaint for recovery of possession or accion publiciana was initiated before the Regional Trial Court of Pasig City.
>
> The initial reaction of the defendant was to file a motion to dismiss based on lack of jurisdiction claiming that the cause of action should have been for unlawful detainer falling within the jurisdiction of the municipal trial courts and that the provision of P.D. No. 1508 was not complied with.
>
> In the Order dated September 30, 1997, the court a quo denied the motion to dismiss on the ground that an unlawful detainer must be filed within one (1) year from the notice to vacate [given] as early as July 1, 1995 and since over two (2) years had passed when the case was filed, the proper action is accion publiciana and no longer unlawful detainer.
>
> Defendant thereafter filed his answer asseverating that he has a 10-year contract of lease (Annex 1, Complaint) over the premises executed between him and plaintiffs' late father on October 1, 1989 to expire on September 30, 1999 and so, the notice to vacate and the present case were all prematurely done. Defendant likewise

> denied the allegation that he has not been paying rentals. The truth is that it was the plaintiffs who refused to receive payments so that the same were deposited with the bank. In the same answer, defendant asserted that the contract of lease gave him the right of first refusal to buy the property and in violation thereof, plaintiffs have already sold the property to a certain Ernesto Brana.
>
> After due proceedings on September 30, 1998, the appealed decision was promulgated with the following dispositive portion:
> "WHEREFORE, in view of the foregoing, judgment is rendered in favor of the plaintiffs and against the defendant, ordering the latter and all persons claiming rights under him to vacate the premises covered by Transfer Certificate of Title No. PT-92411 of the Register of Deeds of Pasig City and turn it over to the plaintiffs. Defendant is also ordered to pay plaintiffs the amount of P3,500.00 effective July 1, 1995 until such time he shall have vacated the premises. In addition, he shall pay attorney's fees in the amount of P30,000.00 plus P1,500.00 per court appearance and the cost of suit.
>
> SO ORDERED.
>
> Pasig City, September 30, 1998." (pp. 4-5, RTC Decision; pp. 76-77, Rollo).[5]

Aggrieved, respondent seasonably appealed the decision to the CA, ascribing to the lower court the following errors:

> - THE COURT A QUO ERRED IN HOLDING THAT THE PLAINTIFFS HAVE A LEGAL RIGHT TO RECOVER POSSESSION OF THE SUBJECT PROPERTY FROM THE DEFENDANT.
>
> - THE LOWER COURT ERRED IN NOT RECOGNIZING THE VALIDITY OF THE CONTRACT OF LEASE DATED OCTOBER 5, 1989, WHICH WAS PREVIOUSLY EXECUTED BY THE PLAINTIFFS' FATHER, ATTORNEY CARLOS P. TORRES, AND HEREIN DEFENDANT.
>
> - THE COURT A QUO ERRED IN DECLARING THAT THE ABOVEMENTIONED CONTRACT IS FRAUDULENT, FABRICATED AND FICTITIOUS AND THAT THE SIGNATURE OF ATTY. TORRES AFFIXED THEREON IS NOT GENUINE.
>
> - THE TRIAL COURT COMMITTED ERROR IN AWARDING DAMAGES AND ATTORNEY'S FEES IN FAVOR OF PLAINTIFFS.[6]

After the submission by the parties of their respective briefs but prior to the resolution of the appeal, petitioners filed with the CA a Motion to Dismiss or for Execution Pending Appeal[7] dated December 6, 1999 on the ground that the lease contract relied upon by respondent to justify his continued possession of the subject property had, by its own terms and respondent's own admission, expired on September 30, 1999.

Thereafter, without acting upon petitioners' motion to dismiss, the CA reversed the decision of the RTC and dismissed the case, holding that the lower court had no jurisdiction over the complaint for accion publiciana considering that it had been filed before the lapse of one (1) year from the date the last letter of demand to respondent had been made. The CA ruled that the proper remedy of petitioners should have been an action for unlawful detainer filed with the first level court, or the municipal or metropolitan trial court.

Their motion for reconsideration having been denied, petitioners filed this present petition arguing that:

- The Court of Appeals decided a question of substance not in accord with jurisprudence and remedial law authorities when it declared as null and void the entire proceedings in the trial court despite the fact that:

- petitioners correctly filed the accion publiciana with the trial court below;

- respondent actively participated in the trial proceeding, testified in person, and submitted to the trial court's

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authority to decide the case; and

- respondent did not raise any jurisdictional issue in his appeal where he raised only the substantive portions of the trial court's decision.

- The Court of Appeals likewise departed from the accepted and usual course of judicial proceedings amounting to serious abuse of discretion when it chose to ignore the glaring fact that respondent's appeal had become moot and academic with the expiration of the lease contract upon which his appeal rested.[8]

In due course, respondent filed his Comment[9] dated October 10, 2001, asserting that the CA correctly set aside the decision of the RTC because the lower court had no jurisdiction over the subject matter of the case. In this regard, respondent pointed out that he had previously assailed the jurisdiction of the trial court in the proceedings below via his Motion to Dismiss[10] dated July 8, 1997. Respondent likewise adopted the reasoning of the CA and argued that petitioners ran afoul of Section 1, Rule 70[11] of the Rules of Court considering that petitioners' Complaint[12] dated June 4, 1997 for recovery of possession was filed only within months from the date the second demand letter to vacate dated May 27, 1997 was served upon him.

In their Reply[13] dated October 20, 2001, petitioners countered that respondent is estopped from raising any jurisdictional issue in connection with the demand letter dated May 27, 1997 considering that respondent never argued during the trial or even in his appeal to the CA that the existence of the second letter divested the trial court of jurisdiction over the complaint.

The petition has merit.

The allegations of a complaint determine the nature of the action as well as which court will have jurisdiction over the case.[14] The complaint would be deemed sufficient if, on its face, it shows that the court has jurisdiction without resorting to parol testimony.[15] Precisely because ejectment proceedings are summary in nature, the complaint should contain a statement of facts which would bring the party clearly within the class of cases for which the statutes provide a remedy.

In the present case, petitioners made the following allegations in their complaint:

> x x x
>
> - [Petitioners] are the duly registered co-owners of a parcel of land and its improvements, more particularly identified as a 3-door apartment, specifically located between Fumakilla Laboratories, Inc. and the Shell Gasoline Station along Amang Rodriguez, Sr. Avenue, Santolan, Pasig City, Metro Manila x x x.
>
> - Sometime in 1981, [respondent] entered into a verbal lease contract with the parents of herein [petitioners], who agreed to lease to the [respondent], on a month-to-month basis, the aforementioned property at the rental rate of Php3,500.00 per month.
>
> - On July 1, 1995, [petitioners] sent [respondent] a Notice to Vacate x x x informing the latter of the termination of the said verbal lease contract and demanding from him to vacate and peacefully surrender to the [petitioners] the aforesaid premises, the possession of which [respondent] has unlawfully withheld from the latter. Notwithstanding these written and oral demands, [respondent] has repeatedly failed and up to now still refuses to turn over the said premises peacefully to the [petitioners].
>
> Since that time, [respondent] has failed to remit his monthly rentals of Php3,500.00 so that as of May 30, 1997, [respondent] has incurred rental arrears now totaling Php 80,500.00 x x x[16]

To summarize, petitioners claim that (1) they are the owners of the property, being the successors-in-interest of the original owners; (2) their predecessors-in-interest entered into a verbal lease agreement with respondent on a

month-to-month basis; (3) they decided to terminate the verbal lease contract upon the expiration of the last monthly term sometime in 1995; and (4) on July 1, 1995, they demanded that respondent leave the property, but respondent refused to do so.

Undeniably, the foregoing averments constitute a cause of action that is based primarily on unlawful deprivation or withholding of possession. Petitioners seek the recovery of the possession of the leased premises following the lapse of the term of the verbal lease contract entered into by petitioners' predecessors-in-interest with respondent. The allegation that the contract is on a month-to-month basis becomes material in this sense because it signifies that the lease contract is terminable at the end of every month.[17] Thus, petitioners may exercise their right to terminate the contract at the end of any month even if none of the conditions of the contract had been violated, and such right cannot be defeated by the lessee's timely payment of the rent or by his willingness to continue doing so. The lease contract expires at the end of every month unless there is an implied or tacit renewal thereof as when the lessee is allowed to continue enjoying the leased premises for fifteen (15) days after the end of every month with the acquiescence of the lessor. Such exception, however, cannot be invoked when notice to vacate is given to the lessee in which case the contract of lease expires at the end of the month.[18]

Moreover, even if the month-to-month agreement is only on a verbal basis, if it is shown that the property is needed for the lessor's own use or for the use of an immediate member of the family or for any of the other statutory grounds to eject, then the lease is considered terminated as of the end of the month, after proper notice or demand to vacate has been given.[19] At this juncture, it must be pointed out that notice or demand to vacate had been properly served upon respondent through the letter[20]dated July 1, 1995, to wit: paul

> July 1/95
>
> Dear Ernesto Gozom,
>
> I would like to reiterate my verbal demand upon you to vacate the premises you are presently occupying made sixty (60) days ago.
>
> The said premises should be vacated within THIRTY (30)[21] DAYS upon receipt hereof for I badly needed it and please take this notice as my final demand after I have verbally given you sixty (60) days already.
>
> Hoping you will give this matter your preferential and utmost attention in order to avoid a costly litigation.
>
> Very truly yours,
>
> (sgd.)
>
> GERMELINA T. RACAZA and
>
> (sgd.)
>
> BERNALDITA T. PARAS

Verily, respondent's right to remain in possession of the property subject of the lease was extinguished upon the expiration of the grace period mentioned in the July 1, 1995 demand letter. It thus becomes respondent's obligation to turn over the property to petitioners, failing which petitioners would have the right to immediately resort to ejectment action to recover possession. Their complaint could thus fall under two kinds of ejectment suits, the first being for unlawful detainer cognizable by the metropolitan or municipal trial courts under Rule 70 and the second being for accion publiciana cognizable by the regional trial courts.[22]

An action for unlawful detainer exists when a person unlawfully withholds possession of any land or building against or from a lessor, vendor, vendee or other persons, after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied.[23] This summary action should be filed with the municipal trial courts within one year after the occurrence of the unlawful deprivation or withholding of possession.[24] Beyond the one-year period, the real right of possession may be recovered through the filing of an accion publiciana with the regional trial courts. [25]

In upholding the propriety of the mode adopted by petitioners to recover possession of their real property, the trial court found that more than one (1) year had lapsed from the time of petitioners' dispossession, to wit:

> x x x
>
> As to the first issue, the [petitioners] have the legal right to recover the property from the [respondent]. [Petitioners] are the absolute owners of the property and the portion of the property which is occupied by the [respondent]. The possession by the [respondent] of the back portion of the property is unlawful and [petitioners] have been unlawfully deprived of the property since July 1, 1995 when they served the notice to vacate to the [respondent]. [Respondent] admits that after the notice to vacate was served upon him, he stopped paying his monthly rentals to the [petitioners]. The present action for recovery of possession was filed more than one year from the time the cause of action of the [petitioners] accrued, which was from the time the [respondent] stopped paying his rental to the [petitioners] or on July 1, 1995. x x x[26]

Respondent nevertheless insists, for the first time, that the one-year period must be reckoned from the date of the second demand letter to vacate, that is, on May 27, 1997. Considering that petitioners' complaint was filed within days from this date, respondent contends that the RTC had no jurisdiction to hear the case. Adopting in toto the position of the CA, respondent argues that petitioners should have filed an action for unlawful detainer instead with the metropolitan or municipal trial courts.

The records of the case, however, do not support this view. Demand or notice to vacate is not a jurisdictional requirement when the action is based on the expiration of the lease. Any notice given would only negate any inference that the lessor has agreed to extend the period of the lease. The law requires notice to be served only when the action is due to the lessee's failure to pay or the failure to comply with the conditions of the lease.[27] The one-year period is thus counted from the date of first dispossession. To reiterate, the allegation that the lease was on a month-to-month basis is tantamount to saying that the lease expired every month. Since the lease already expired mid-year in 1995 as communicated in petitioners' letter dated July 1, 1995, it was at that time that respondent's occupancy became unlawful.

Even assuming, for the sake of argument, that a demand or notice to vacate was necessary, a reading of the second letter shows that petitioners were merely reiterating their original demand for respondent to vacate on the basis of the expiration of the verbal lease contract mentioned in the first letter. For clarity, the full text of the second letter[28] sent by petitioners' counsel is reproduced below:

> Dear Mr. Gozom:
>
> My principals, Germelina Torres Racaza and Bernaldita Torres Paras, have brought to me for legal action the

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> fact of your unjustified and unlawful possession and occupation of the entire back portion of their apartment building, located between Fumakilla Laboratories Inc. and the Shell Gasoline Station along Amang Rodriguez, Sr. Avenue, Santolan, Pasig City, Metro Manila.
>
> According to my principals, your verbal contract of lease covering the said premises already expired sometime in July 1995 and the same has never been renewed, for which reason you discontinued paying your monthly rentals of Php3,500.00.
>
> Notwithstanding their constant reminders and requests to you, for you to immediately vacate the aforesaid leased premises in view of the expiration of the lease contract, you have up to this time failed and still refuse to vacate the said premises to the prejudice of my clients.
>
> In this regard, please consider this letter our formal demand and notice for you to vacate the said leased premises on or before the 2[nd] day of June 1997. Should you fail to so vacate and leave the premises and to pay your total monthly rental arrearages, amounting to Php 80,500.00, on or before the said date, we shall be constrained to pursue all available remedies under the law to protect the interests of my clients.
>
> Very truly yours,
>
> (sgd.)
>
> ATTY. CELSO P. YLADAN II
> Counsel for Germelina Torres Racaza
> and Bernaldita Torres Paras
>
> (Emphases supplied.)

The Court has, in the past, ruled that subsequent demands which are merely in the nature of reminders or reiterations of the original demand do not operate to renew the one-year period within which to commence the ejectment suit considering that the period will still be reckoned from the date of the original demand.[29]

Besides, the allegations in the complaint and the answer put in issue the existence and validity of the verbal lease contract itself. Respondent contends that the lease term over the property is ten (10) years based on a written lease contract purportedly executed by him and petitioners' predecessors-in interest. In this situation, it is the RTC which would be in the best position to determine the true nature of the agreement between the parties and to decide which of the two agreements is valid. In fact, it found that the written lease contract was spurious and not binding upon the petitioners.

Moreover, it is too late for respondent to invoke the defense of lack of jurisdiction on the ground that the action was filed before the lapse of one year from the date of last demand. Based on the records, respondent never pursued this line of argument in the proceedings before the trial court and even in his appeal to the CA. While it is true that prior to the filing of his answer, respondent moved to dismiss the complaint on the theory that the allegations therein merely constituted an action for unlawful detainer, the motion did not raise any jurisdictional issue relative to the second demand letter. When his motion to dismiss was denied, respondent no longer challenged the jurisdiction of the trial court in his subsequent pleadings and instead actively participated in the proceedings held before the RTC by relying principally on the strength of the written lease contract allegedly executed between him and petitioners' predecessors-in-interest. It was only when the CA motu proprio dismissed the complaint that respondent conveniently thought of adopting the novel theory embodied in the assailed decision of the appellate court. Under these circumstances, estoppel has already set in.

In Tijam v. Sibonghanoy,[30] this Court held that a party's active participation in all stages of the case before the trial court, which includes invoking the court's authority to grant affirmative relief, effectively estops such party

from later challenging that same court's jurisdiction. The CA's conclusion that the doctrine enunciated in Tijam has been abandoned is erroneous as, in fact, the same has been upheld and reiterated in many succeeding cases.[31] Thus, while an order or decision rendered without jurisdiction is a total nullity and may be assailed at any stage, a party's active participation in the proceedings in the tribunal which rendered the order or decision will bar such party from attacking its jurisdiction.

In any event, this Court notes that by respondent's own claim,[32] the term of the alleged written lease contract expired on September 30, 1999 or several months before the decision of the appellate court was rendered. The CA should have taken cognizance of this material fact considering that the statement is binding upon respondent and is an admission which renders moot the issue of who has a better right of possession.

WHEREFORE, the petition is GRANTED and the assailed Decision dated July 12, 2000 as well as the Resolution dated June 28, 2001 rendered by the Court of Appeals in CA-G.R. CV No. 61227 are REVERSED and SET ASIDE. Accordingly, the Decision dated September 30, 1998 of the Regional Trial Court, Branch 158, Pasig City in Civil Case No. 66295 is REINSTATED.

No costs.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Respondent is sometimes referred to as Ernesto Gozom in the records.[2] Rollo, pp. 31-36.[3] Id. at 37-38.[4] Records, pp. 133-137.[5] Rollo, pp. 31-33.[6] Id. at 64.[7] Rollo, pp. 117-125.[8] Id. at 14.[9] Rollo, pp. 139-143.[10] Id. at 144-146.[11] Who may institute proceedings, and when. - Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.[12] Records, pp. 1-10.[13] Rollo, pp. 160-164.[14] Sumulong v. CA, G.R. No. 108817, May 10, 1994, 232 SCRA 372.[15] Sarmiento v. CA, 320 Phil. 146 (1995).[16] Records, pp. 1-2.[17] This is based on Article 1687 of the Civil Code which provides as follows:

> "If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. x x x."

[18] Cruz v. IAC, G.R. No. 72313, December 29, 1989, 180 SCRA 702.[19] Guiang v. Samano, G.R. No. 50501, April 22, 1991, 196 SCRA 114.[20] Records, p. 8.[21] The letter contained a handwritten inscription changing the grace period from 30 days to 60 days which appears to have been countersigned by petitioners.[22] Lopez v. David, G.R. No. 152145, March 30, 2004, 426 SCRA 535.[23] RULES OF COURT, Rule 70, Section 1.[24] De La Paz v. Panis, G.R. No. 57023, June 22, 1995, 245 SCRA 242.[25] Cruz v. Torres, G.R. No. 121939, October 4, 1999, 316 SCRA 193.[26] Records, p. 135.[27] Lanuza v. Muñoz, G.R. No. 147372, May 27, 2004, 429 SCRA 562.[28] Records, p. 10.[29] Desbarats v. Laureano, G.R. No. L-21875, September 27, 1966, 18 SCRA 116.[30] G.R. No. L-21450, April 15, 1968, 23 SCRA 29.[31] Soliven v. Fastforms Philippines, Inc ., G.R. No. 139031,

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October 18, 2004, 440 SCRA 389; Philippine Banking Corporation v. CA, G.R. No. 127469, January 15, 2004, 419 SCRA 487; Sta. Lucia Realty and Development, Inc. v. Cabrigas, G.R. No. 134895, June 19, 2001, 358 SCRA 715; PNOC Shipping and Transport Corporation v. CA, G.R. No. 107518, October 8, 1998, 297 SCRA 402; Caltex (Philippines) Inc. v. CA, G.R. No. 97753, August 10, 1992, 212 SCRA 448.[32] Records, pp. 31, 33.

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