RENE GANILA, EDUARDO DUMADA-OG, SR., RAFAEL GANILA, JOSE PASTRANA, LOURDES GANILA, FLORENTINO GANILA, SERAFIN GANILA, LORETO ARELLANO, CONRADO GANILA, VIVENCIO ALVIOR, EDUARDO G...

G.R. NO. 150755. June 28, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated March 30, 2001 of the Court of Appeals in CA-G.R. SP No. 58191, and its Resolution[2] dated October 18, 2001 denying the motion for reconsideration. The assailed decision denied the petition to set aside the Resolution[3] of the Regional Trial Court (RTC) of San Miguel, Jordan, Guimaras, Branch 65, affirming the Order of the Municipal Circuit Trial Court (MCTC) for the 19 petitioners to vacate the contested parcel of land.

The facts are as follows:

On March 19, 1997, private respondent Violeta Herrera filed 21 ejectment Complaints[4] before the 16th MCTC, Jordan-Buenavista-Nueva Valencia, Jordan, Guimaras. Private respondent alleged that she owns Lot 1227 of the Cadastral Survey of Jordan, Guimaras, with an area of 43,210 square meters; that she inherited the lot from her parents; and that she only tolerated petitioners to construct residential houses or other improvements on certain portions of the lot without rental. Sometime in September or October 1996, private respondent demanded that the petitioners vacate the lot and remove their houses and other improvements thereon. Petitioners refused, despite offer of money by way of assistance to them. After the barangay conciliation failed, private respondent filed the complaints.

In their Answers,[5] eight[6] of the petitioners claimed that Lot 1227 was formerly a shoreline which they developed when they constructed their respective houses. Another eight[7] maintained that their houses stood on Lot 1229 of the Cadastral Survey of Jordan, Guimaras. The other three[8] asserted that Lot 1227 is a social forest area.

At the preliminary conference, the parties agreed to designate two geodetic engineers as commissioners of the MCTC to conduct a relocation survey of Lot 1227 and to identify who among the petitioners have houses within the lot.[9]

The commissioners reported that: (1) the house of Henry Gabasa, defendant in Civil Case No. 288-J, is almost outside Lot 1227; (2) the house of Ludovico Amatorio, defendant in Civil Case No. 289-J, diagonally traversed the boundary; and (3) the houses of the 19 petitioners are inside Lot 1227.[10]

Eight months after herein petitioners' failure to comment on the manifestation of private respondent to terminate the preliminary conference, the MCTC terminated the preliminary conference.[11] Thereafter, petitioners' counsel Atty. Nelia Jesusa L. Gonzales failed to file her clients' position papers and affidavits, even after they

sought a 30-day extension to file the same.[12]

Consequently, the MCTC decided the cases as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff whereby each of the twenty-one (21) defendants are hereby ordered:
>
> 1. To vacate Lot 1227 of the Cadastral Survey of Jordan, Guimaras;
>
> 2. To pay Two Hundred Pesos (P200.00) per month from October, 1996 as compensation for the use of the property until the same is vacated; and
>
> 3. To pay Two Thousand Pesos (P2,000.00) as attorney's fees and litigation expenses.
>
> SO ORDERED.[13]

Petitioners appealed to the RTC, Branch 65, at Jordan, Guimaras, which decided as follows:

> WHEREFORE, premises considered, the decision in Civil Cases Nos. 0270-J, 0272-J, 0273-J, 0274-J, 0275-J, 0276-J, 0277-J, 0278-J, 0279-J, 0280-J, 0281-J, 0282-J, 0283-J, 0284-J, 0285-J, 0286-J, 0287-J, 0291-J and 0292-J are hereby affirmed.
>
> The decision of the court below in Civil Cases Nos. 0288-J and 0289-J are set aside. Civil Cases Nos. 0288-J and 0289-J are hereby DISMISSED.
>
> SO ORDERED.[14]

The RTC ruled that the evidence showed the better right of private respondent to possess Lot 1227. Private respondent's position paper, affidavit and tax declaration supported her allegations. In addition, the commissioners' report and sketch plan showed that indeed petitioners occupy Lot 1227. On the other hand, according to the RTC, the petitioners failed to present evidence which would show that they are entitled to possess the lot.

Based on the sketch plan, the RTC dismissed the cases against Gabasa and Amatorio since their houses occupy only a small area of Lot 1227. It declared that Gabasa and Amatorio believed in good faith that the whole area they occupied was part of the seashore.

The 19 petitioners, who were ordered to vacate the lot, filed a joint petition for review with the Court of Appeals. The appellate court denied the petition. Petitioners moved for reconsideration and filed an amended petition. The Court of Appeals, however, affirmed the factual findings and conclusions arrived at by the trial courts and denied the amended petition for lack of merit.[15] It also denied the motion for reconsideration.

Petitioners are now before us, on a petition for review, alleging that:

> The Honorable Court of Appeals, with due respect and deference, committed a reversible error in the interpretation/application of the law in the instant case and in the appreciation of the facts and evidence presented. The Court of Appeals gravely abused its discretion when it denied and dismissed the petition filed by the petitioners.[16]

After considering the parties' submissions, we find three basic issues: (1) Did the MCTC err in taking jurisdiction over and deciding the cases? (2) Did the RTC err in sustaining the MCTC's judgment? (3) Did the CA err in denying the petition for review filed by the 19 petitioners ordered to be ejected?

Petitioners insist that private respondent should have filed an action to recover possession de jure, not a mere complaint for ejectment, for two reasons. One, they possessed Lot 1227 in good faith for more than 30 years in

the concept of owners. And two, there was no withholding of possession since private respondent was not in prior possession of the lot.

Private respondent states in her Comment before us that the allegations in her Complaints make out a clear case of unlawful detainer which is cognizable by the MCTC. We are in agreement with her stance. There was no error in the choice of the complainant's remedy, a matter left to her determination as the suitor. And the complaint itself is defined by the allegations therein, not the allegations of the defendants.

At the outset, we note that petitioners question the MCTC's jurisdiction yet they admit in their preliminary statement that the Complaints filed are indeed for unlawful detainer, and that the only issue to be determined is mere physical possession (possession de facto) and not juridical possession (possession de jure), much less ownership.[17]

While petitioners assert that this case involves only deprivation of possession, they confuse the remedy of an action for forcible entry with that of unlawful detainer. In unlawful detainer, prior physical possession by the plaintiff is not necessary. It is enough that plaintiff has a better right of possession. Actual, prior physical possession of a property by a party is indispensable only in forcible entry cases. In unlawful detainer cases, the defendant is necessarily in prior lawful possession of the property but his possession eventually becomes unlawful upon termination or expiration of his right to possess.[18] Thus, the fact that petitioners are in possession of the lot does not automatically entitle them to remain in possession. And the issue of prior lawful possession by the defendants does not arise at all in a suit for unlawful detainer, simply because prior lawful possession by virtue of contract or other reasons is given or admitted. Unlike in forcible entry where defendants, by force, intimidation, threat, strategy or stealth, deprive the plaintiff or the prior physical possessor of possession. Here there is no evidence to show that petitioners entered the lot by any of these acts.

If only to stress the fundamental principles related to present controversy, jurisdiction over unlawful detainer suits is vested in municipal trial courts.[19] And in ejectment cases, the jurisdiction of the court is determined by the allegations of the complaint.[20]

In this case for ejectment, private respondent's allegations sufficiently present a case of unlawful detainer. She alleged that (1) she owns Lot 1227; (2) she tolerated petitioners to construct their houses thereon; (3) she withdrew her tolerance; and (4) petitioners refused to heed her demand to vacate the lot. The Complaints were also filed within one year from the date of her demand. The cause of action for unlawful detainer between the parties springs from the failure of petitioners to vacate the lot upon lawful demand of the private respondent. When they refused to vacate the lot after her demand, petitioners' continued possession became unlawful. Her complaint for ejectment against respondent, to put it simply, is not without sufficient basis.

Petitioners' contention that private respondent should have filed an action to recover possession de jure with the RTC is not supported by law or jurisprudence. The distinction between a summary action of ejectment and a plenary action for recovery of possession and/or ownership of the land is settled in our jurisprudence.

> What really distinguishes an action for unlawful detainer from a possessory action (accion publiciana) and from a reinvindicatory action (accion reinvindicatoria) is that the first is limited to the question of possession de facto. An unlawful detainer suit (accion interdictal) together with forcible entry are the two forms of an ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, accion publiciana or the plenary action to recover the right of possession and accion reinvindicatoria or the action to recover ownership which includes recovery of possession, make up the three kinds of actions to judicially recover possession.[21]

It is not up to defendants, now petitioners herein, to dictate upon plaintiff, now the private respondent, what her

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initial recourse should be. Her choice of an action for ejectment against so-called squatters is well within her rights.

Petitioners cite the case of Bayubay v. Court of Appeals,[22] and argue that the MCTC's decision was without jurisdictional or legal basis because the MCTC did not issue a preliminary conference order. They assert that the 10-day period to file position papers and affidavits only starts after the parties had received a preliminary conference order. They insist they were denied due process when the MCTC decided the cases based merely on private respondent's Complaints and affidavit, without considering their Answers.

For her part, private respondent maintains that there was substantial compliance with the rules in the MCTC's conduct of the preliminary conference, hence there was no violation of due process nor disregard of its proper jurisdiction.

Petitioners' present contention was first raised only in their appeal to the RTC. Raising it before the appellate tribunal is barred by estoppel.[23] They should have raised it in the proceedings before the MCTC. In our view, this issue is a mere afterthought, when the MCTC decided against them. Basic rules of fair play, justice and due process require that as a rule an issue cannot be raised by the petitioners for the first time on appeal.[24]

Besides, petitioners did not question initially the MCTC's Order dated February 19, 1999, when they moved for an extension of time to file their position papers and affidavits. They wanted another 30 days on top of the 30 days set by the MCTC, which strictly should have been 10 days only. In this regard, petitioners could not claim that they were denied sufficient time to file their position papers and affidavits before the trial court. Further, they cannot validly invoke our ruling[25] in Bayubay, for in that case there was no order at all terminating the preliminary conference and requiring the parties to submit position papers and affidavits.

We note with dismay petitioners' insistence that we order the MCTC "to conduct the requisite preliminary conference." The summary character of ejectment suits will be disregarded if we allow petitioners to further delay this case by allowing a second preliminary conference. Ejectment by way of forcible entry and unlawful detainer cases are summary proceedings, designed to provide an expeditious means of protecting actual possession or the right to possession over the property involved. It is a timely procedure designed to remedy the delay in the resolution of such cases.[26]

Lastly, petitioners aver that private respondent failed to prove her allegation of ownership of Lot 1227 as it is only based on a tax declaration which is not an evidence of ownership. They also claim that their possession of the lot was not and could not be by mere tolerance. However, this is a factual matter best left to the trial courts.

What we have now is sufficient evidence showing that private respondent has a better right to possess Lot 1227. The commissioners' report and sketch plan show that the 19 petitioners occupy the lot, which corroborate private respondent's allegation and disprove petitioners' defense that Lot 1227 is a shoreline; or that Lot 1227 is a social forest area. While not a conclusive evidence of ownership, private respondent's tax declaration constitutes proof that she has a claim of title over the lot. It has been held that:

> Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's bona fide claim of acquisition of ownership.[27]

The lower courts did not err in adjudicating the issue of possession. Mere absence of title over the lot is not a ground for the courts to withhold relief from the parties in an ejectment case. Plainly stated, the trial court has validly exercised its jurisdiction over the ejectment cases below. The policy behind ejectment suits is to prevent breaches 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 she claims is hers. The party deprived of possession must not take the law into his or her own hands.[28] For their part, herein petitioners could not be barred from defending themselves before the court adequately, as a matter of law and right.

However, petitioners in their defense should show that they are entitled to possess Lot 1227. If they had any evidence to prove their defenses, they should have presented it to the MCTC with their position papers and affidavits. But they ignored the court's order and missed the given opportunity to have their defenses heard, the very essence of due process.[29] Their allegations were not only unsubstantiated but were also disproved by the plaintiff's evidence.

In sum, we find no reversible error much less any grave abuse of discretion committed by the Court of Appeals. A person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him.[30] His status is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner. In such a case, the date of unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate.[31]

WHEREFORE, the instant petition is DENIED for lack of merit. The Decision of the Court of Appeals dated March 30, 2001 and its Resolution dated October 18, 2001 are AFFIRMED.

Costs against petitioners.
SO ORDERED.

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

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[*] "Galila" in some parts of the records.

[1] Rollo, pp. 24-34. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Eriberto U. Rosario, Jr., and Alicia L. Santos concurring.

[2] Id. at 39.

[3] Id. at 51-63.

[4] Civil Case Nos. 270-J; 272-J; 273-J; 274-J; 275-J; 276-J; 277-J; 278-J; 279-J; 280-J; 281-J; 282-J; 283-J; 284-J; 285-J; 286-J; 287-J; 288-J; 289-J; 291-J; 292-J entitled VIOLETA C. HERRERA v. RENE GANILA; EDUARDO DUMADA-OG, SR.; RAFAEL GANILA; JOSE PASTRANA; LOURDES GANILA; FLORENTINO GANILA; SERAFIN GANILA; LORETO ARELLANO; CONRADO GANILA; VIVENCIO ALVIOR; EDUARDO GANTALA; AMPARO VILLANUEVA; ELEUTERIO SILVA; ADELINA GANILA; FELIZARDO GANILA, SR.; ENRIQUE GANILA; ABRAHAM TANONG; HENRY GABASA; LUDOVICO AMATORIO; EMILIO ALFARAS, JR.; and BAPTIST CHRISTIAN LEARNING CENTER; respectively (CA Rollo, pp. 115-261). Henry Gabasa and Ludovico Amatorio are not among the petitioners since the Complaints against them were dismissed by the RTC.

[5] CA Rollo, pp. 262-392.

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[6] Rene Ganila, Eduardo Dumada-og, Sr., Rafael Ganila, Jose Pastrana, Lourdes Ganila, Florentino Ganila, Serafin Ganila and Loreto Arellano.

[7] Conrado Ganila, Vivencio Alvior, Eduardo Gantala, Eleuterio Silva, Amparo Villanueva, Adelina Ganila, Felizardo Ganila, Sr. and Enrique Ganila.

[8] Emilio Alfaras, Jr., Abraham Tanong and the Baptist Christian Learning Center. Henry Gabasa and Ludovico Amatorio also interposed the same defense.

[9] Rollo, p. 26; See also Petitioners' Amended Petition for Review with the CA, CA Rollo, p. 89.

[10] CA Rollo, p. 421.

[11] Id. at 455.

[12] Rollo, pp. 32, 58, 59.

[13] Id. at 49-50.

[14] Id. at 63.

[15] Id. at 33-34.

[16] Id. at 9.

[17] Id. at 10.

[18] Rivera v. Rivera, G.R. No. 154203, 8 July 2003, 405 SCRA 466, 470.

[19] Rules of Court, Rule 70, Section 1. – Who may institute proceedings, and when. – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

[20] Heirs of Demetrio Melchor v. Melchor, G.R. No. 150633, 12 November 2003, 415 SCRA 726, 732.

[21] Custodio v. Corrado, G.R. No. 146082, 30 July 2004, 435 SCRA 500, 510.

[22] G.R. No. 105866, 6 July 1993, 224 SCRA 557.

[23] Villaranda v. Villaranda, G.R. No. 153447, 23 February 2004, 423 SCRA 571, 580.

[24] Id. at 579-580.

[25] Supra, note 22 at 560.

[I]mmediately after the preliminary conference, the Municipal Trial Court should issue an order clearly and distinctly setting forth the issues of the case and the other matters taken up during the preliminary conference.

The order is an important part of the summary procedure because it is its receipt by the parties that begins the ten-day period to submit the affidavits and other evidence mentioned in Sec. 7.

The minutes of the Municipal Trial Court dated August 22, 1989, contained a notation that the pre-trial had been "terminated" and that the parties were to submit position papers. However, there was no order to this effect nor was there an indication of when the position papers were to be submitted for the purpose of discussing the factual questions raised. (Underscoring supplied.)

[26] Don Tino Realty and Dev't. Corp. v. Florentino, G.R. No. 134222, 10 September 1999, 372 Phil. 882, 889.

[27] Alcaraz v. Tangga-an, G.R. No. 128568, 9 April 2003, 401 SCRA 84, 90-91.

[28] Pajuyo v. Court of Appeals, G.R. No. 146364, 3 June 2004, 430 SCRA 492, 512.

[29] Tubiano v. Razo, G.R. No. 132598, 13 July 2000, 390 Phil. 863, 869.

[30] Rollo, p. 33; Boy v. Court of Appeals, G.R. No. 125088, 14 April 2004, 427 SCRA 196, 206.

[31] Rollo, p. 49.

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