BABY ARLENE LARANO, PETITIONER, VS. SPS. ALFREDO CALENDACION AND RAFAELA T. CALENDACION,RESPONDENTS.

G.R. NO. 158231. June 19, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court assailing the Decision[1] dated May 13, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 68272 which dismissed the complaint for unlawful detainer of Baby Arlene Laraño (petitioner) against Spouses Alfredo and Rafaela Calendacion (respondents).

The factual background of the case is as follows:

Petitioner owns a parcel of riceland situated in Barangay Daniw, Municipality of Victoria, Laguna covered by TCT No. 175241 of the Register of Deeds of Laguna. On September 14, 1998, petitioner and respondents executed a Contract to Sell whereby the latter agreed to buy a 50,000-square meter portion of petitioner's riceland for P5Million, with P500,000.00 as down payment and the balance payable in nine installments of P500,000.00 each, until September 2001.[2]

Pending full payment of the purchase price, possession of the riceland was transferred to respondents under the condition that they shall account for and deliver the harvest from said riceland to petitioner. Respondents, however, failed to pay the installments and to account for and deliver the harvest from said riceland.[3]

On March 7, 2000, petitioner sent respondents a demand letter[4] to vacate the riceland within 10 days from receipt thereof, but as her demand went unheeded, she filed on April 5, 2000 a Complaint[5] against respondents for unlawful detainer before the Municipal Trial Court (MTC), Victoria, Laguna, docketed as Civil Case No. 826, praying that respondents be directed to vacate the riceland and to pay P400,000.00 per year from September 1998 until they vacate, as reasonable compensation for the use of the property, P120,000.00 as attorney's fees, and P50,000.00 as litigation expenses.[6]

In their Answer[7] dated April 26, 2000, respondents admit the execution of the Contract to Sell but deny that it contains all the agreements of the parties. They allege that petitioner has no cause of action against them because the three-year period within which to pay the purchase price has not yet lapsed; that the MTC has no jurisdiction over the case because the complaint failed to allege that a demand to pay and to vacate the riceland was made upon them.[8]

On August 2, 2001, the MTC rendered a Decision,[9] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered ordering defendants, as follows:
>
> 1.) To immediately vacate the premises in question;
>
> 2.) To pay the amount of THREE HUNDRED SIXTY FIVE THOUSAND (P365,000.00) PESOS as a

reasonable compensation for the use and occupation of the property;

3.) To pay TWENTY THOUSAND (P20,000.00) PESOS for and attorney's fees; and

4.) To pay FIVE THOUSAND (P5,000.00) PESOS as litigation expenses, plus costs.

SO ORDERED.[10]

Respondents filed an appeal with the Regional Trial Court (RTC), Branch 26, Sta. Cruz, Laguna, docketed as Civil Case No. SC-4141.[11] On December 3, 2001, the RTC rendered a Decision,[12] the dispositive portion of which reads:

WHEREFORE, the judgment of the trial court is hereby affirmed subject to the modification that defendants are ordered to pay plaintiff the amount of FOUR HUNDRED THOUSAND (P400,000.00), as yearly reasonable compensation for the use and occupation of said riceland computed from 1999 until such time that defendants have actually vacated the same.

SO ORDERED.[13]

Undaunted, respondents filed a Petition for Review with the CA.[14] For failure to file her comment despite receipt of CA Resolution[15] dated May 8, 2002 which required her to file a comment, petitioner was deemed to have waived her right to file comment to the petition in CA Resolution dated August 28, 2002.[16]

On May 13, 2003, the CA rendered a Decision[17] setting aside the Decision of the RTC and dismissing the complaint for unlawful detainer. The CA nullified the proceedings before the MTC for want of jurisdiction. It held that the issues in the case - whether or not there was a violation of the Contract to Sell, whether or not such violation gives the petitioner the right to terminate the contract and consequently, the right to recover possession and the value of the harvest from the riceland - extend beyond those commonly involved in unlawful detainer suits where only the issue of possession is involved; that the case is not a mere detainer suit but one incapable of pecuniary estimation, placing it under the exclusive original jurisdiction of the RTC, not the MTC.

Dissatisfied, petitioner filed the present petition anchored on the following grounds:

- The respondent Court of Appeals committed grave error in giving due course to the private respondents' petition for review notwithstanding the fact that said petition contains no verification to the effect that the allegations therein were read and understood by the private respondents and that they are true and correct of their own or personal knowledge or based on authentic records, as required by the rules.

- The respondent Court of Appeals grievously erred in dismissing the case on the ground that the Municipal Trial Court has no jurisdiction over the case for unlawful detainer, and thus the Regional Trial Court likewise has no jurisdiction on appeal to decide the case for unlawful detainer, which allegedly involves a matter incapable of pecuniary estimation.

- The respondent Court of Appeals erred in not affirming the decision of the Regional Trial Court dated December 3, 2001, modifying the decision of the Municipal Trial Court dated August 2, 2000 both ordering the eviction of private respondents from the subject property and payment of the reasonable value of the use of the subject premises.[18]

Petitioner contends that the CA should have dismissed outright the petition for review filed before it since it contains no verification as required by the Rules; and that the CA, in finding that the complaint before the MTC was not one for unlawful detainer but for specific performance, did not limit itself to the allegations in the complaint but resorted to unrestrained references, deductions and/or conjectures, unduly influenced by the allegations in the answer.

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Respondents, on the other hand, contend that verification is just a formal requirement; that petitioner waived her right to question the defect when she failed to submit her comment; that the CA correctly pointed out that the present case involves one that is incapable of pecuniary estimation since the crux of the matter is the rights of the parties based on the Contract to Sell.

The petition is bereft of merit.

As to the contention of petitioner that the CA should not have taken cognizance of the petition for review because it was not verified, as required by the Rules, this Court has held in a number of instances that such a deficiency can be excused or dispensed with in meritorious cases, the defect being neither jurisdictional nor always fatal.[19] The requirement regarding verification of a pleading is formal.[20] Such requirement is simply a condition affecting the form of pleading, the non-compliance with which does not necessarily render the pleading fatally defective.[21] Verification is simply intended to secure an assurance that the allegations 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.[22] The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the Rules may be dispensed with in order that the ends of justice may thereby be served.[23]

Besides, petitioner did not raise the issue of lack of verification before the CA. She did not file a comment to the petition and it is too late in the day to assail such defect, as she is deemed to have waived any objection to the formal flaws of the petition. Points of law, theories, issues and arguments not brought to the attention of the lower court cannot be raised for the first time on appeal.[24]

The main issue being raised in the present petition is whether the complaint is one for unlawful detainer.

Settled is the rule that jurisdiction in ejectment cases is determined by the allegations pleaded in the complaint.[25] It cannot be made to depend upon the defenses set up in the answer or pleadings filed by the defendant.[26] Neither can it be made to depend on the exclusive characterization of the case by one of the parties.[27] The test for determining the sufficiency of those allegations is whether, admitting the facts alleged, the court can render a valid judgment in accordance with the prayer of the plaintiff.[28]

The facts upon which an action for unlawful detainer can be brought are specially mentioned in Section 1, Rule 70 of the Revised Rules of Court, which provides:

> 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. (Emphasis supplied)

In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess; hence, the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.[29]

Applied to the present case, petitioner, as vendor, must comply with two requisites for the purpose of bringing an ejectment suit: (a) there must be failure to pay the installment due or comply with the conditions of the Contract to

Sell; and (b) there must be demand both to pay or to comply and vacate within the periods specified in Section 2[30] of Rule 70, namely: 15 days in case of land and 5 days in case of buildings. The first requisite refers to the existence of the cause of action for unlawful detainer, while the second refers to the jurisdiction requirement of demand in order that said cause of action may be pursued.[31]

Both demands – to pay installment due or adhere to the terms of the Contract to Sell and to vacate are necessary to make the vendee deforciant in order that an ejectment suit may be filed.[32] It is the vendor's demand for the vendee to vacate the premises and the vendee's refusal to do so which makes unlawful the withholding of the possession.[33] Such refusal violates the vendor's right of possession giving rise to an action for unlawful detainer.[34] However, prior to the institution of such action, a demand from the vendor to pay the installment due or comply with the conditions of the Contract to Sell and to vacate the premises is required under the aforequoted rule.

Thus, mere failure to pay the installment due or violation of the terms of the Contract to Sell does not automatically render a person's possession unlawful. Furthermore, the giving of such demand must be alleged in the complaint; otherwise, the MTC cannot acquire jurisdiction over the case.[35]

A review of the Complaint of petitioner discloses these pertinent allegations: petitioner owns the subject riceland; she executed a Contract to Sell in favor of respondents; pending full payment of the purchase price, possession of subject riceland was transferred to respondents subject to accounting and delivery of the harvest to petitioner; respondents failed to pay the installments and to account for and deliver the harvest; petitioner asked respondents to vacate the subject riceland, but they failed to do so. Accordingly, petitioner prayed for judgment ordering respondents to vacate the subject riceland and to pay P400,000.00 per year from September 1998 until they vacate as reasonable compensation for the use of the property, P120,000.00 as attorney's fees, and P50,000.00 as litigation expenses.

It is clear from the foregoing that the allegations in the Complaint failed to constitute a case of unlawful detainer. What is clear is that in the Complaint, petitioner alleged that respondents had violated the terms of the Contract to Sell. However, the Complaint failed to state that petitioner made demands upon respondents to comply with the conditions of the contract – the payment of the installments and the accounting and delivery of the harvests from the subject riceland. The 10-day period granted respondents to vacate even fell short of the 15-day period mandated by law. When the complaint does not satisfy the jurisdictional requirements of a valid cause for unlawful detainer, the MTC does not have jurisdiction to hear the case.[36]

An allegation of a violation of a contract or agreement in a detainer suit may be proved by the presentation of competent evidence, upon which an MTC judge might make a finding to that effect, but certainly, that court cannot declare and hold that the contract is rescinded. The rescission of contract is a power vested in the RTC.[37] The rescission of the contract is the basis of, and therefore a condition precedent for, the illegality of a party's possession of a piece of realty.[38] Without judicial intervention and determination, even a stipulation entitling one party to take possession of the land and building, in case the other party violates the contract, cannot confer upon the former the right to take possession thereof, if that move is objected to.[39]

Clearly, the basic issue raised in the complaint of petitioner is not of possession but interpretation, enforcement and/or rescission of the contract, a matter that is beyond the jurisdiction of the MTC to hear and determine.

WHEREFORE, the instant petition is DENIED. The Decision dated May 13, 2003 of the Court of Appeals in CA-G.R. SP No. 68272 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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* Also spelled as "Laraño" in other parts of the record.

** The present petition impleaded the Court of Appeals as respondent. However, Section 4, Rule 45 of the Revised Rules of Court provides that the petition shall not implead the lower courts and judges thereof as petitioners or respondents. Hence, the deletion of the Court of Appeals from the title.

[1] Penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Cancio C. Garcia (now Supreme Court Associate Justice) and Eloy R. Bello, Jr. (now retired), CA rollo, p. 201.

[2] Id. at 94.

[3] Id. at 19-20.

[4] Id. at 97.

[5] Id. at 19.

[6] Id. at 20.

[7] Id. at 22.

[8] Id. at 25-26.

[9] Id. at 48.

[10] Id. at 56.

[11] Id. at 57.

[12] Id. at 83.

[13] Id. at 93.

[14] Id. at 5.

[15] Id. at 104.

[16] Id. at 138.

[17] Id. at 201.

[18] Rollo, p. 363.

[19] Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory, 433 Phil. 463, 469 (2002); Pampanga Sugar Development Company, Inc. v. National Labor Relations Commission, 339 Phil. 120, 127-128 (1997); Joson v. Torres, 352 Phil. 888, 911-912 (1998).

[20]Uy v. Land Bank of the Philippines, 391 Phil. 303, 312 (2000); Sy v. Habacon-Garayblas, A.M. No. MTJ-93-860, December 21, 1993, 228 SCRA 644, 646; Buenaventura v. Halili-Uy, G.R. No. L-28156, March 31, 1987, 149 SCRA 22, 26.

[21] Uy v. Land Bank of the Philippines, supra note 20; Republic of the Philippines v. Lee Wai Lam, 139 Phil. 265, 269 (1969).

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[22] Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory, supra note 19; Uy v. Land Bank of the Philippines, supra note 20; Buenaventura v. Halili-Uy, supra note 20; Republic of the Philippines v. Lee Wai Lam, supra note 21.

[23] Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory, supra note 19; Uy v. Land Bank of the Philippines, supra note 20; Sy v. Habacon-Garayblas, supra note 20; Republic of the Philippines v. Lee Wai Lam, supra note 21, at 269-270.

[24] Grogun, Incorporated v. National Power Corporation, 458 Phil. 217, 231 (2003); Mendoza v. Court of Appeals, G.R. No. 116216, June 20, 1997, 274 SCRA 527, 538-539; City of Cebu v. Heirs of Rubi, 366 Phil. 70, 85 (1999).

[25] Habagat Grill v. DMC-Urban Property Developer, Inc., G.R. No. 155110, March 31, 2005, 454 SCRA 653, 662; Lizo v. Carandang, 73 Phil. 649 (1942).

[26] Santos v. Ayon, G.R. No. 137013, May 6, 2005, 458 SCRA 83, 89; Roxas v. Court of Appeals, 439 Phil. 966, 978-979 (2002).

[27] Reyes v. Solemar Development Corporation, G.R. No. 129247 and Reyes v. Republic of the Philippines, G.R. No. 136270, March 3, 2006, 484 SCRA 1, 6; Pilipinas Bank v. Court of Appeals, 383 Phil. 18, 28 (2000).

[28] Heirs of Melchor v. Melchor, 461 Phil. 437, 443-444 (2003); Feliciano v. Court of Appeals, 350 Phil. 499, 508 (1998).

[29] David v. Cordova, G.R. No. 152992, July 28, 2005, 464 SCRA 384, 396-397; Sarmiento v. Court of Appeals, 320 Phil. 146, 153 (1995); Sumulong v. Court of Appeals, G.R. No. 108817, May 10, 1994, 232 SCRA 372, 382-383.

[30] Section 2. Lessor to proceed against lessee only after demand. - Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

[31] Siapian v. Court of Appeals, 383 Phil. 753, 761 (2000); Cetus Development, Inc. v. Court of Appeals, G.R. Nos. 77647-77652, August 7, 1989, 176 SCRA 72, 81.

[32] Arquelada v. Philippine Veterans Bank, 385 Phil. 1200, 1212 (2000); Regalado, Remedial Law Compendium, p. 770; Zobel v. Abreu, 98 Phil. 343, 346 (1956).

[33] Arquelada v. Philippine Veterans Bank, supra note 32; Dio v. Concepcion, 357 Phil. 578, 591 (1998); Casilan v. Tomassi, 119 Phil. 521, 524 (1964)

[34] Arquelada v. Philippine Veterans Bank, supra note 32; Dio v. Concepcion, supra note 33.

[35] Arquelada v. Philippine Veterans Bank, supra note 32; Casilan v. Tomasi, supra note 33.

[36] Heirs of Melchor v. Melchor, supra note 28, at 446.

[37] Villena v. Spouses Chavez, 460 Phil. 818, 827 (2003).

[38] Id., citing Zulueta v. Hon. Mariano, 197 Phil. 196, 201-202 (1982).

[39] Id. at 827-828.

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