

**LILIA V. PERALTA-LABRADOR, PETITIONER, VS. SILVERIO BUGARIN,
SUBSTITUTED BY HIS WIDOW, CONSOLACION BUGARIN,
RESPONDENT.**

G.R. NO. 165177. August 25, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Challenged in this petition for review on certiorari is the March 12, 2004 decision[2] of the Court of Appeals in CA-G.R. SP No. 57475, which affirmed with modification the January 26, 2000 judgment[3] of the Regional Trial Court (RTC) of Iba, Zambales, Branch 71, in Civil Case No. RTC-1590-I, which in turn affirmed the decision[4] dated May 16, 1999 of the Municipal Trial Court (MTC) of San Felipe, Zambales, in Civil Case No. 328, and its September 6, 2004 resolution[5] denying reconsideration thereof.

On January 18, 1996, petitioner Lilia V. Peralta-Labrador filed a case for "Recovery of Possession and Ownership," docketed as Civil Case No. 328, with the MTC of San Felipe, Zambales. She alleged that she is the owner of Cadastral Lot No. 2650, with an area of 400 sq. m. located at Sitio Caarosipan, Barangay Manglicmot, San Felipe, Zambales, having purchased the same in 1976 from spouses Artemio and Angela Pronto. In 1977, she was issued Tax Declaration No. 10462 and paid the taxes due thereon.[6]

In 1990, the Department of Public Works and Highways constructed a road which traversed Cadastral Lot No. 2650 thereby separating 108 sq. m. from the rest of petitioner's lot, for which she was issued Tax Declaration No. 02-2460R in 1991.[7]

Sometime in 1994, respondent Silverio Bugarin forcibly took possession of the 108 sq. m. lot and refused to vacate the same despite the pleas of petitioner. Hence, on January 18, 1996, she instituted a complaint for recovery of possession and ownership against respondent.

In his Answer with Counterclaims,[8] respondent contended that the area claimed by petitioner is included in the 4,473 square meter lot, covered by the Original Certificate of Title (OCT) No. P-13011; and that he has been in continuous possession and occupation thereof since 1955. In his Amended Answer with Counterclaim,[9] however, respondent failed to allege that the questioned lot is covered by the OCT No. P-13011, and instead asserted that he planted fruit bearing trees in the property. Respondent further pleaded the defenses of lack of cause of action and prescription.

On May 16, 1999, the court a quo ruled in favor of respondent declaring him as the owner of the controverted lot on the basis of the OCT No. P-13011. The complaint was dismissed for failure of petitioner to prove prior physical possession and ownership thereof. The dispositive portion thereof, reads:

WHEREFORE, all the foregoing premises considered and for failure on the part of the plaintiff to establish the preponderance of evidence of prior actual physical possession and present title over the lot in her favor, let the instant case be ordered DISMISSED, and the defendant be awarded the rightful possession and ownership of

the same and the plaintiff is hereby ordered to pay FIFTEEN THOUSAND (P15,000.00) PESOS as reasonable Attorney's fee and FIVE THOUSAND (P5,000.00) PESOS as appearance fee plus costs.

SO ORDERED.[10]

The RTC affirmed the assailed decision,[11] hence petitioner filed a petition for review before the Court of Appeals which was however denied for insufficiency of evidence to prove ownership or prior actual physical possession. The appellate court deleted the monetary awards in favor of respondent as well as the declaration of the MTC that respondent is the owner of the questioned lot on the ground that the OCT No. P-13011, relied upon by said court was not formally offered in evidence, hence, cannot be considered by the court. The decretal portion thereof, states:

WHEREFORE, in view of the foregoing discussion, the instant petition is hereby PARTIALLY GRANTED. The assailed Decision dated January 26, 2000, in Civil Case No. RTC 1590 I of the Regional Trial Court (RTC), Branch 71, Iba, Zambales, and Decision dated May 16, 1999, in Civil Case No. 328 of the Municipal Trial Court of San Felipe, Zambales are MODIFIED by deleting the declaration of ownership as to the disputed 108 square meters and the monetary award in favor of respondent Silverio Bugarin. However, the dismissal of the complaint is AFFIRMED.

SO ORDERED.[12]

The motion for reconsideration filed by petitioner was denied. Hence the instant petition.

Pertinent portion of Section 1, Rule 70 of the Revised Rules of Civil Procedure, provides:

SECTION 1. Who may institute proceedings, and when. -... a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, ... 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 the damages and costs. (Emphasis supplied)

In *Lopez v. David Jr.*,[13] it was held that an action for forcible entry is a quieting process and the one year time bar for filing a suit is in pursuance of the summary nature of the action. Thus, we have nullified proceedings in the MTCs when it improperly assumed jurisdiction of a case in which the unlawful deprivation or withholding of possession had exceeded one year. After the lapse of the one year period, the suit must be commenced in the RTC via an *accion publiciana*, a suit for recovery of the right to possess. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. It also refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty independently of title. Likewise, the case may be instituted before the same court as an *accion reivindicatoria*, which is an action to recover ownership as well as possession.[14]

Corrollarily, jurisdiction of a court is determined by the allegations of the complaint. Thus, in ascertaining whether or not the action falls within the exclusive jurisdiction of the inferior courts, the averments of the complaint and the character of the relief sought are to be examined.[15]

In the instant case, petitioner's complaint alleges that:

- That plaintiff is the owner of a parcel of land denominated as Cadastral lot No. 2650, San Felipe Cadastre, situated at sitio Caarosipan, Barangay Manglicmot, San Felipe, Zambales which she bought in 1976 from Spouses Artemio Pronto and Angela Merano when she was still a widow, with the following boundaries: North, Alipio Abad, East, Antonio Cueva, South, Juan Borja, and West, Old Provincial Road, containing an area of 108 square meters, declared under Tax Declaration No. 002-1860R and assessed at P1,120.00;

- That plaintiff has been in open, continuous, exclusive and adverse as well as notorious possession of the said lot and in the concept of an owner since she [acquired] it in 1976 until the time when defendant took possession forcibly, two years ago;

- That in or before 1990 the land was traversed by a new National Highway and the land was segregated from a bigger portion of the land, the western portion is now the land in question and since the new provincial road which traversed the whole land of the plaintiff, the old highway which is west of Lot 2650 shall belong to the plaintiff in compensation of the portion of her lot traversed by the new highway, said old highway is also taken by defendant unlawfully;[16]

It is clear that petitioner's averment make out a case for forcible entry because she alleged prior physical possession of the subject lot way back in 1976, and the forcible entry thereon by respondent. Considering her allegation that the unlawful possession of respondent occurred two years[17] prior to the filing of the complaint on January 18, 1996, the cause of action for forcible entry has prescribed and the MTC had no jurisdiction to entertain the case. Petitioner's complaint therefore should have been filed with the proper RTC.

It is settled that jurisdiction over the subject matter cannot be waived by the parties or cured by their silence, acquiescence or even express consent.[18] Hence, the failure of respondent to insist on the defenses of lack of cause of action and prescription stated in his Amended Answer with Counterclaim will not vest the MTC with jurisdiction over the case.

On this point, the Court held in *Bongato v. Malvar*[19] that:

It is wise to be reminded that forcible entry is a quieting process, and that the restrictive time bar is prescribed to complement the summary nature of such process. Indeed, the one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry to the land. However, when entry is made through stealth, then the one-year period is counted from the time the plaintiff learned about it. After the lapse of the one-year period, the party dispossessed of a parcel of land may file either an *accion publiciana*, which is a plenary action to recover the right of possession; or an *accion reivindicatoria*, which is an action to recover ownership as well as possession.

On the basis of the foregoing facts, it is clear that the cause of action for forcible entry filed by respondents had already prescribed when they filed the Complaint for ejectment on July 10, 1992. Hence, even if Severo Malvar may be the owner of the land, possession thereof cannot be wrested through a summary action for ejectment of petitioner, who had been occupying it for more than one (1) year. Respondents should have presented their suit before the RTC in an *accion publiciana* or an *accion reivindicatoria*, not before the MTCC in summary proceedings for forcible entry. Their cause of action for forcible entry had prescribed already, and the MTCC had no more jurisdiction to hear and decide it.

...

Further, a court's lack of jurisdiction over the subject matter cannot be waived by the parties or cured by their silence, acquiescence or even express consent. A party may assail the jurisdiction of the court over the action at any stage of the proceedings and even on appeal. That the MTCC can take cognizance of a motion to dismiss on the ground of lack of jurisdiction, even if an answer has been belatedly filed we likewise held in *Bayog v. Natino*[.]

Moreover, even if the MTC has jurisdiction over the subject matter, the complaint should still be dismissed because petitioner failed to prove that the controverted 108 sq. m. lot is part of Cadastral Lot No. 2650. Petitioner admitted that she has never seen the Cadastral Map of San Felipe, Zambales, and relied only on the Survey Notification Card[20] from the Bureau of Lands,[21] with a sketch of Cadastral Lot No. 2650. Said card,

however, does not reflect the 108 sq. m. lot subject of this case. Neither did petitioner cause the survey of Cadastral Lot No. 2650 after the construction of a new road to prove that the segregated portion on the western side is part thereof. Ei incumbit probatio qui dicit, non qui negat. He who asserts, not he who denies, must prove.[22] Failing to discharge this burden, the dismissal of the complaint is proper.

In the same vein, ownership of the lot in question cannot be awarded to respondent considering that OCT No. P-13011,[23] and the Survey Plan[24] were not formally offered in evidence. While the issue of ownership may be passed upon in ejectment cases for the sole purpose of determining the nature of possession,[25] no evidence conclusively show that the lot in question is covered by said OCT No. P-13011 or any other title of respondent.

WHEREFORE, the May 16, 1999 decision of the Municipal Trial Court of San Felipe, Zambales, the January 26, 2000 decision of the Regional Trial Court, Branch 71, Iba, Zambales, and the March 12, 2004 decision of the Court of Appeals, are ANNULLED and SET ASIDE for lack of jurisdiction. The complaint in Civil Case No. 328 is DISMISSED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] See the July 18, 2000 Resolution of the Court of Appeals noting the death of Silverio Bugarin and granting the substitution of Consolacion Bugarin as respondent. CA Rollo, p.119.

[2] Rollo, pp. 17-23. Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Delilah Vidallon-Magtolis and Jose L. Sabio, Jr., concurring.

[3] CA Rollo, pp. 142-144. Penned by Judge Romulo M. Estrada.

[4] Id. at 53-62. Penned by Judge Lavezares C. Leomo.

[5] Rollo, pp. 24-25.

[6] Exhibit "B", Records, p. 349.

[7] Exhibit "B-3", Id. at 352.

[8] Records, pp. 11-13.

[9] Id. at 147-150.

[10] CA Rollo, pp. 61-62.

[11] Id. at 142-144.

[12] Rollo, p. 23.

[13] G.R. No. 152145, 30 March 2004, 426 SCRA 535, 542-543.

[14] Bongato v. Malvar, G.R. No. 141614, 14 August 2002, 387 SCRA 327, 338.

[15] Sps. Tirona v. Hon. Alejo, 419 Phil. 285, 297. (2001).

[16] Records, p. 1.

[17] Petitioner even stated on direct examination that the unlawful possession of respondent started in 1990. (TSN, 17 April 1996; Records, p. 88)

- [18] Bongato v. Malvar, *supra* at 340-341.
- [19] *Id.* at 338-341.
- [20] Exhibit "D," Records, p. 368.
- [21] TSN, 23 April 1996, p. 127.
- [22] *Sps. Boyboy v. Atty. Yabut, Jr.*, 449 Phil. 664, 668 (2003).
- [23] Records, p. 17.
- [24] *Id.* at 396.
- [25] *Sps. Refugia v. CA*, 327 Phil. 982, 1001-1002 (1996).

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