

**ALMARIO BEJAR (DECEASED), AS SUBSTITUTED BY HIS HEIRS
– CARMELITA BEJAR, ALFREDO BEJAR, GREGORIA B.
DANCEL, BRENDA B. MIANO, LOURDES B. BENDIJO, AND SUSANA B.
CAMILO, PETITIONER...**

G.R. NO. 171277. February 15, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] of the Court of Appeals dated May 23, 2005 in CA-G.R. SP No. 85430.

The factual backdrop of the case is as follows:

On August 2, 2002, the late Almario Bejar, substituted by his heirs, herein petitioners, filed with the Metropolitan Trial Court (MeTC), Branch 12, Manila, a complaint for illegal detainer and damages against Maricel Caluag, herein respondent, docketed as Civil Case No. 173262-CV. The allegations therein are partly reproduced hereunder:

x x x

- Plaintiff is the owner of a residential house made of light materials consisting of wood and galvanized iron roof built on government-owned land located at 777 Coral Street, Tondo, Manila.

- On December 21, 1981, plaintiff sold one-half (1/2) portion of the said residential house with an area of twenty-two feet in length and fifteen feet in width to Fernando Mijares in the amount of Eleven Thousand (P11,000.00) Pesos x x x

- Subsequently, plaintiff became the owner in fee simple of the government land where his residential house was built including the one-half portion he sold to Fernando Mijares, located at 777 Coral Street, Tondo, Manila, evidenced by Transfer Certificate of Title No. 156220 registered and entered in the Register of Deeds of Manila on August 30, 1983 x x x

- On September 2, 1991, Fernando Mijares, sold his residential house to Maricel Caluag with residence address at 1391 R.A. Reyes St., Tondo, Manila to be used as a warehouse for her business x x x

- Plaintiff badly needs the portion of his land occupied by the defendant to build a residential house for use of his family;

- On April 9, 2002, plaintiff through counsel sent a formal demand letter to defendant for the latter to vacate the portion of the property situated at 777 Coral Street, Tondo, Manila within ten (10) days from receipt of the demand letter x x x

- Despite formal demand from the plaintiff on April 19, 2002, defendant failed and refused and still fails and refuses to vacate said portion of the property owned by the plaintiff located at 777 Coral Street, Tondo, Manila

to the damage and prejudice of plaintiff.

x x x

On October 15, 2002, respondent filed a motion to dismiss on the ground that the MeTC has no jurisdiction over the case as it involves the issue of ownership.

On February 10, 2003, respondent filed a supplement to her motion to dismiss alleging that pursuant to the “Kasulatan ng Bilihan ng Bahay,” Almario Bejar sold to Fernando Mijares both his house and the entire lot on which it was constructed, citing paragraph 4 of the “Kasulatan” which reads:

Na alang alang sa halagang LABING ISANG LIBO PISO (P11,000.00) kuartang Filipino na kasalukuyang gastahin na aking tinanggap ng buong kasiyahang loob kay FERNANDO MIJARES x x x ay aking ipinagbili, ibinigay, isinulit at inilipat ng buo kong pagaari na kalahating harapan ng bahay ko naipaliwanag sa itaas at ang pagbibili kong ito ay kasama ang lahat kong karapatan sa lupa kung may karapatan ako na kinatitirikan ng bahay.[2]

On June 16, 2003, the MeTC issued an Order dismissing Civil Case No. 173262-CV for want of jurisdiction, holding that the actual issue between the parties is the enforceability of the subsequent sale by Fernando Mijares to respondent of the subject property; and that, therefore, jurisdiction properly lies with the Regional Trial Court (RTC).

On appeal, the RTC, Branch 47, Manila, on January 5, 2004, rendered its Decision reversing the Order of dismissal of the MeTC. The RTC held that the issue in Civil Case No. 173262-CV is who has better possession of the disputed property. The RTC then directed the MeTC to hear the case on the merits.

Respondent seasonably filed a motion for reconsideration but it was denied.

Respondent then filed with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 85430.

In its Decision dated May 23, 2005, the Court of Appeals reversed the RTC judgment, thus:

WHEREFORE, the instant petition is GRANTED. The assailed decision of the Regional Trial Court, National Capital Judicial Region, Branch 47, Manila, in Civil Case No. 03-107631 is REVERSED and SET ASIDE. The order, dated 16 June 2003, of the Metropolitan Trial Court, National Capital Judicial Region, Branch 12, Manila in Civil Case No. 173262-CV, dismissing Almario Bejar’s complaint for lack of jurisdiction is hereby REINSTATED.

Let this case be remanded to the Regional Trial Court, National Capital Judicial Region, Branch 47, Manila for further proceedings pursuant to Section 8, Rule 40 of the Revised Rules of Court.

SO ORDERED.

The appellate court held that the allegations of the complaint do not make out a case for illegal detainer or forcible entry.

Petitioners filed a motion for reconsideration of the above Decision but in its Resolution dated January 27, 2006, the Court of Appeals denied the same.

Hence, the instant petition.

For our resolution is the issue of whether the MeTC has jurisdiction over Civil Case No. 173262-CV for illegal detainer.

There are four (4) remedies available to one who has been deprived of possession of real property. These are: (1) an action for unlawful detainer; (2) a suit for forcible entry; (3) accion publiciana; and (4) accion reivindicatoria.

In unlawful detainer and forcible entry cases, the only issue to be determined is who between the contending parties has better possession of the contested property.[3] Pursuant to Section 33 (2) of Batas Pambansa Blg. 129, as amended by Section 3 of Republic Act No. 7691, it is the Municipal Trial Courts, Metropolitan Trial Courts in Cities, and Municipal Circuit Trial Courts that exercise exclusive original jurisdiction over these cases. The proceedings are governed by the Rule on Summary Procedure, as amended.

By contrast, an accion publiciana, also known as accion plenaria de posesion,[4] is a plenary action for recovery of possession in an ordinary civil proceeding in order to determine the better and legal right to possess, independently of title.[5]

There are two distinctions between the summary ejectment suits (unlawful detainer and forcible entry) and accion publiciana. The first lies in the period within which each one can be instituted. Actions for unlawful detainer and forcible entry must be filed within one year from the date possession is lost, while an accion publiciana may be filed only after the expiration of that period but within the period prescribed in the statute of limitations. The second distinction involves jurisdiction. An accion publiciana may only be filed with the RTC, while a complaint for unlawful detainer or forcible entry may only be filed with the first level courts earlier mentioned.

An accion reivindicatoria, unlike the three remedies previously discussed, involves not only possession, but ownership of the property. The plaintiff in this action sets up title in him and prays that he be declared the owner and be given possession thereof.[6] Otherwise put, the plaintiff alleges ownership of real property and prays for recovery of such ownership. Under Article 434 of the Civil Code, two things must be alleged and proven in an accion reivindicatoria: (1) the identity of the property and (2) plaintiff's title to it. Sole and exclusive jurisdiction over cases for accion reivindicatoria is vested in the RTC.

We are guided by the elementary principle that what determines the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.[7]

To make out a suit for illegal detainer or forcible entry, the complaint must contain two mandatory allegations: (1) prior physical possession of the property by the plaintiff; and (2) deprivation of said possession by another by means of force, intimidation, threat, strategy or stealth.[8] This latter requirement implies that the possession of the disputed property by the intruder has been unlawful from the very start. Then, the action must be brought within one year from the date of actual entry to the property or, in cases where stealth was employed, from the date the plaintiff learned about it.[9]

An examination of the allegations in the complaint in Civil Case No. 173262-CV does not show that Almario Bejar was deprived of his possession of the property by force, intimidation, threat, strategy or stealth.

Here, the case is for unlawful detainer. The complaint clearly alleges that Almario Bejar sold one-half portion of his house to Fernando Mijares; that the latter, in turn, sold the same portion of the house to respondent; that eventually, Almario Bejar became the owner in fee simple of the entire lot where his house was built; that he needs the portion of the lot occupied by respondent for the construction of a house for the use of his family; and that despite demand, respondent failed and still fails to vacate the premises. From the records, it appears that Almario Bejar filed his complaint within one year from the date of his last demand upon respondent to vacate the contested portion of the land.

A suit for unlawful detainer will prosper if the complaint sufficiently alleges that there is a withholding of possession or refusal to vacate the property by a defendant.[10] The cause of action arises from the expiration or

termination of the defendant's right to continue possession which is upon plaintiff's demand to vacate the premises. The complaint for unlawful detainer must then be instituted within one year from the date of the last demand.[11] All these incidents are present in the instant case.

Considering that the allegations in Almario Bejar's complaint in Civil Case No. 173262-CV show that it is one for illegal detainer, hence, it is the MeTC, Branch 12, Manila which has jurisdiction over Civil Case No. 173262-CV.

WHEREFORE, we GRANT the petition and REVERSE the assailed Decision of the Court of Appeals. The RTC Decision is AFFIRMED. Let the records of this case be remanded to the MeTC, Branch 12, Manila, for further proceedings with dispatch.

SO ORDERED.

Puno, C.J. (Chairman), Corona, Azcuna, and Garcia, JJ., concur.

[1] Rollo, pp. 36-48. Per Associate Justice Perlita J. Tria Tirona (retired) and Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Jose C. Reyes, Jr., concurring.

[2] Reproduced from the Decision of the Court of Appeals in CA-G.R. SP No. 85430, id., pp. 36-48.

[3] *Rivera v. Rivera*, G.R. No. 154203, July 8, 2003, 405 SCRA 466, 471.

[4] *Barredo v. Santiago*, 102 Phil. 127, 130 (1957).

[5] *Bishop of Cebu v. Mangaron*, 6 Phil. 286, 291 (1906); *Ledesma v. Marcos*, 9 Phil. 618, 620 (1908).

[6] *Alo v. Rocamora*, 6 Phil. 197, 198 (1906), *Ledesma v. Marcos*, supra.

[7] *Huguete v. Embudo*, G.R. No. 149554, July 1, 2003, 405 SCRA 273, 278, citing *Cañiza v. Court of Appeals*, 268 SCRA 640 (1997).

[8] *Baños v. Lutheran Church in the Philippines*, G.R. No. 142308, November 15, 2005, 475 SCRA 13, 34, citing *David v. Cordova*, 464 SCRA 385 (2005), *Sps. Tirona v. Alejo*, 367 SCRA 17 (2001).

[9] *Bongato v. Malvar*, G.R. No. 141614, August 14, 2002, 387 SCRA 327, 338, citing *Sps. Ong v. Court of Appeals*, 355 SCRA 691 (2001).

[10] *Varona v. Court of Appeals*, G.R. No. 14148, May 20, 2004, 428 SCRA 577, 584, citing *Tirona v. Alejo*, 367 SCRA 17 (2001).

[11] *Macasaet v. Macasaet*, G.R. Nos. 154391-92, September 30, 2004, 439 SCRA 625, 633.

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