

**RODOLFO “RUDY” CANLAS, VICTORIA CANLAS,
FELICIDAD CANLAS AND SPOUSES PABLO CANLAS AND CHARITO
CANLAS, PETITIONERS, VS. ILUMINADA TUBIL, RESPONDENT.**

G.R. No. 184285. September 25, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari is the June 12, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP No. 99736, which reversed the April 11, 2007 Decision[2] of the Regional Trial Court (RTC) of Guagua, Pampanga, Branch 50, in Special Civil Case No. G-06-544, and ordered said Regional Trial Court to decide the case on merits, pursuant to Section 8, par. 2 of Rule 40 of the Rules of Court. The RTC affirmed the Decision[3] of the Municipal Trial Court (MTC) of Guagua, Pampanga, Branch 2, which dismissed Civil Case No. 3582 for unlawful detainer filed by respondent Iluminada Tubil. Also assailed is the September 1, 2008 Resolution[4] of the Court of Appeals which denied the Motion for Reconsideration.

The facts are as follows:

On June 9, 2004, a complaint for unlawful detainer was filed by respondent Iluminada Tubil against petitioners Rodolfo Canlas, Victoria Canlas, Felicidad Canlas and spouses Pablo and Charito Canlas before the MTC. The pertinent allegations read:

x x x x

3. That the plaintiff is the owner, together with the other heirs of her late husband Nicolas Tubil who are their children, of a residential land located at San Juan, Betis, Guagua, Pampanga, identified as Cadastral Lot No. 2420, with an area of 332 square meters, covered by Original Certificate of Title No. 11199 of the Registry of Deeds of Pampanga, x x x;

x x x x

4. That before the aforesaid parcel of land was titled, it was declared for taxation purposes in the name of plaintiff Iluminada Tubil in the Municipal Assessor's Office of Guagua, Pampanga, x x x;

x x x x

6. That sometime ago, the defendants Roldolfo 'Rudy' Canlas, Victoria Canlas and Felicidad Canlas erected a house in the aforesaid land of the plaintiff, which they are presently occupying as their residential house;

7. That likewise sometime ago defendants spouses Pablo Canlas and Charito Canlas erected a house in the aforesaid land of the plaintiff, which they are presently occupying as their residential house;

8. That the said houses of the defendants were erected in the aforesaid land and their stay therein was by mere tolerance of the plaintiff, as well as co-heirs, considering that defendants are plaintiff's relatives;

9. That plaintiff and her co-heirs wish to use and dedicate the aforesaid parcel of land fruitfully, demands were verbally made upon the defendants to vacate and remove their house therefrom, but defendants just ignored the plea of plaintiff and co-heirs, and instead failed and refused to remove the houses without any lawful and justifiable reason;

10. That in light of said refusal, the plaintiff referred the matter to a lawyer, who sent defendants demand letters to vacate dated January 12, 2004, but inspite of receipt of the same defendants failed and refused to vacate and remove their houses and continue to fail and refuse to do so without lawful justification x x x;

11. That this matter was ventilated with before the barangay government for conciliation, mediation, arbitration and settlement prior to the filing of this case with this court, but no settlement was arrived at inspite of the effort exerted by the barangay authorities and so a certification to file action was issued by the Pangkat Chairman of Barangay San Juan, Betis, Guagua, Pampanga x x x;[5]

Petitioners filed a motion to dismiss alleging that the MTC is without jurisdiction over the subject matter, and that the case was not prosecuted in the name of the real parties in interest.[6]

On September 14, 2004, the MTC denied the motion because the grounds relied upon were evidentiary in nature which needed to be litigated.[7]

Thus, petitioners filed their answer where they denied the allegations in the complaint. They claimed that together with their predecessors-in-interest, they had been in open, continuous, adverse, public and uninterrupted possession of the land for more than 60 years; that respondent's title which was issued pursuant to Free Patent No. 03540 was dubious, spurious and of unlawful character and nature; and that respondent's cause of action was for an accion publiciana, which is beyond the jurisdiction of the MTC.[8]

On October 23, 2006, the MTC rendered judgment dismissing the complaint for unlawful detainer because respondent failed to show that the possession of the petitioners was by mere tolerance.

Respondent appealed to the RTC which rendered its Decision on April 11, 2007 affirming in toto the judgment of the MTC. Respondent filed a motion for reconsideration but it was denied in an Order[9] dated June 8, 2007.

Respondent filed a petition for review with the Court of Appeals, which rendered the assailed decision on June 12, 2008, which reversed the Regional Trial Court's Decision, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered by us SETTING ASIDE the decision rendered by Branch 50 of the RTC in Guagua, Pampanga on April 11, 2007 in Special Civil Case No. G-06-544 and ORDERING the said regional trial court branch to decide Special Civil Case No. G-06-544 on the merits based on the entire record of the proceedings had in the Municipal Trial Court of Guagua, Pampanga in Civil Case No. 3582 and such memoranda as are filed therewith, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice, pursuant to par. 2 of Section 8 of Rule 40 of the 1997 Revised Rules of Court.

IT IS SO ORDERED.[10]

Petitioners moved for reconsideration but it was denied by the Court of Appeals in its September 1, 2008 Resolution.[11]

Hence, this petition for review on certiorari alleging that:

x x x THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT SET ASIDE THE DECISION RENDERED BY BRANCH 50 OF THE REGIONAL TRIAL COURT OF GUAGUA, PAMPANGA ON APRIL 11, 2007 IN SPECIAL CIVIL CASE NO. G-06-544 AND IN ORDERING THE SAID COURT TO DECIDE SPECIAL CIVIL CASE NO. G-06-544 ON THE MERITS BASED ON THE

ENTIRE RECORD OF THE PROCEEDINGS HAD IN THE MUNICIPAL TRIAL COURT OF GUAGUA, PAMPANGA IN CIVIL CASE NO. 3582, WITHOUT PREJUDICE TO THE ADMISSION OF AMENDED PLEADINGS AND ADDITIONAL EVIDENCE PURSUANT TO PARAGRAPH 2 OF SECTION 8 OF RULE 40 OF THE 1997 RULES OF CIVIL PROCEDURE AS AMENDED, DESPITE THE FACT THAT BRANCH 50 OF THE REGIONAL TRIAL COURT OF GUAGUA, PAMPANGA DOES NOT HAVE ORIGINAL JURISDICTION OVER THE SUBJECT MATTER OF CIVIL CASE NO. 3582 FILED IN THE MUNICIPAL TRIAL COURT OF GUAGUA, PAMPANGA ON JUNE 9, 2004.[12]

Petitioners contend that the RTC does not have original jurisdiction over the subject matter of the case, thus, it cannot validly decide on the merits, as ordered by the Court of Appeals, pursuant to paragraph 2 of Section 8, Rule 40 of the Rules of Court, which reads:

SEC. 8. Appeal from orders dismissing case without trial; lack of jurisdiction. -

x x x x

If the case was tried on the merits by the lower court without jurisdiction over the subject matter, the Regional Trial Court on appeal shall not dismiss the case if it has original jurisdiction thereof, but shall decide the case in accordance with the preceding section, without prejudice to the admission of amended pleadings and additional evidence in the interest of justice.

We note that when petitioners filed their motion to dismiss before the MTC, they claimed that it is the RTC which has jurisdiction over the subject matter. However, in the instant petition for review, petitioners changed their theory; they now claim that it is the MTC, and not the RTC, which has jurisdiction over the subject matter since the dispossession was only for five months counted from respondent's last demand to the filing of the complaint for unlawful detainer before the MTC.

As a rule, a change of theory cannot be allowed.[13] However, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory,[14] as in this case, the Court may give due course to the petition and resolve the principal issues raised therein.

The issue to be resolved is which court, the MTC or the RTC has jurisdiction over the subject matter. If it is an unlawful detainer case, the action was properly filed in the MTC. However, if the suit is one for accion publiciana, original jurisdiction is with the RTC, which is mandated not to dismiss the appeal but to decide the case on the merits pursuant to Section 8 of Rule 40 of the Rules of Court.

Well-settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint.[15] In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence.[16]

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[17]

An unlawful detainer proceeding is summary in nature, jurisdiction of which lies in the proper municipal trial court or metropolitan trial court. The action must be brought within one year from the date of last demand and the issue in said case is the right to physical possession.[18]

On the other hand, accion publiciana is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint, more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of forcible entry or illegal detainer, but an accion publiciana.

In *Cabrera v. Getaruela*,^[19] the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

- (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
- (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
- (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
- (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

In the instant case, respondent's allegations in the complaint clearly make a case for an unlawful detainer, essential to confer jurisdiction on the MTC over the subject matter. Respondent alleged that she was the owner of the land as shown by Original Certificate of Title No. 111999 issued by the Register of Deeds of Pampanga; that the land had been declared for taxation purposes and she had been paying the taxes thereon; that petitioners' entry and construction of their houses were tolerated as they are relatives; and that she sent on January 12, 2004 a letter demanding that petitioners vacate the property but they failed and refused to do so. The complaint for unlawful detainer was filed on June 9, 2004, or within one year from the time the last demand to vacate was made.

It is settled that as long as these allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter. This principle holds, even if the facts proved during the trial do not support the cause of action thus alleged, in which instance the court - after acquiring jurisdiction - may resolve to dismiss the action for insufficiency of evidence.^[20]

The ruling cited by the Court of Appeals in *Sarmiento v. Court of Appeals*,^[21] i.e., that jurisdictional facts must appear on the face of the complaint for ejectment such that when the complaint fails to faithfully aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected, or how and when dispossession started, the remedy should either be an accion publiciana or an accion reivindicatoria in the proper regional trial court,^[22] finds no application in the instant case. In *Sarmiento*, the complaint did not characterize the entry into the land as legal or illegal. It was also not alleged that dispossession was effected through force, intimidation, threat, strategy or stealth to make out a case of forcible entry, nor was there a contract, express or implied, as would qualify the case as unlawful detainer.^[23] Contrarily, the complaint in this case specifically alleged that possession of the petitioners was by tolerance. The rule is that possession by tolerance is lawful, but such possession becomes unlawful upon demand to vacate made by the owner and the possessor by tolerance refuses to comply with such demand.^[24] In *Sarmiento*, the claim that possession of the land was by tolerance was a mere afterthought, raised only in subsequent pleadings but not in the complaint.^[25]

The requirement that the complaint should aver jurisdictional facts, like when and how entry on the land was made by the defendants, applies only when at issue is the timeliness of the filing of the complaint before the MTC and not when the jurisdiction of the MTC is assailed as being one for accion publiciana cognizable by the RTC.

Thus, in *Javelosa v. Court of Appeals*,^[26] it was held that:

The ruling in the *Sarona* case cited by petitioner i.e., that a complaint for unlawful detainer should allege when and how entry on the land was made by the defendant, finds no application to the case at bar. In *Sarona*, the main issue was the timeliness of the filing of the complaint before the MTC. In forcible entry cases, the prescriptive period is counted from the date of defendant's actual entry on the land; in unlawful detainer, from the date of the last demand to vacate. Hence, to determine whether the case was filed on time, there was a necessity to ascertain whether the complaint was one for forcible entry or unlawful detainer. In light of these considerations, the Court ruled that since the main distinction between the two actions is when and how defendant entered the land, the determinative facts should be alleged in the complaint. Thus, in *Sarona*, the jurisdiction of the MTC over the complaint was never in issue for whether the complaint was one for forcible entry or unlawful detainer, the MTC had jurisdiction over it. The case at bar is different for at issue is the jurisdiction of the MTC over the unlawful detainer case for petitioner (defendant therein) asserts that the case is one for *accion publiciana* cognizable by the RTC.

In the instant case, the timeliness of the filing of the complaint is not at issue as the dispossession of the property by the respondent has not lasted for more than one year. Thus, the ruling of the RTC that the length of time she was dispossessed of the property is almost 36 years, which made her cause of action beyond the ambit of unlawful detainer and became one for *accion publiciana*,^[27] lacks legal and factual basis.

Section 1, Rule 70 of the Rules of Court allows a plaintiff to bring an action in the proper inferior court for unlawful detainer within one year, after such unlawful withholding of possession, counted from the date of the last demand.^[28] The records show that respondent sent the demand to vacate the property to the petitioners on January 24, 2004 and filed the complaint for unlawful detainer on June 9, 2004, which is well within the one-year period.

Having ruled that the MTC acquired jurisdiction over Civil Case No. 3582, it thus properly exercised its discretion in dismissing the complaint for unlawful detainer for failure of the respondent to prove tolerance by sufficient evidence. Consequently, Section 8 (2nd par.) of Rule 40 of the Rules of Court which ordains the Regional Trial Court not to dismiss the cases appealed to it from the metropolitan or municipal trial court which tried the same albeit without jurisdiction, but to decide the said case on the merits, finds no application here.

WHEREFORE, the petition is GRANTED. The June 12, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 99736 ordering the Regional Trial Court of Guagua, Pampanga, Branch 50 to decide Special Civil Case No. G-06-544, as well as its September 1, 2008 Resolution denying the Motion for Reconsideration, are REVERSED and SET ASIDE. The October 23, 2006 Decision of the MTC of Guagua, Pampanga, Branch 2, dismissing the complaint for unlawful detainer for failure of respondent to show that petitioners' possession of the subject property was by mere tolerance is REINSTATED and AFFIRMED.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 24-27; penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon R. Garcia.

[2] Id. at 57-64; penned by Judge Gregorio J. Pimentel, Jr.

[3] Id. at 48-56; penned by Judge Eda P. Dizon-Era.

[4] Id. at 38-39.

[5] Id. at 40-43.

[6] Records (1), pp. 34-37.

[7] Id. at 70-72.

[8] Id. at 76-77.

[9] Id. at 65-66.

[10] Id. at 37.

[11] Id. at 39.

[12] Id. at 8.

[13] Philippine National Construction Corporation v. Court of Appeals, G.R. No. 159270, August 22, 2005, 467 SCRA 569, 584.

[14] Quasha Ancheta Peña and Nolasco Law Office v. LCN Construction Corporation, G.R. No. 174873, August 26, 2008.

[15] Domalsin v. Valenciano, G.R. No. 158687, January 25, 2006, 480 SCRA 114, 133.

[16] Id. at 133-134.

[17] Valdez v. Court of Appeals, G.R. No. 132424, May 4, 2006, 489 SCRA 369, 376.

[18] Id.

[19] G.R. No. 164213, April 21, 2009.

[20] Habagat Grill v. DMC-Urban Property Developer, Inc., 494 Phil. 603, 611 (2005).

[21] G.R. No. 116192, November 16, 1995, 250 SCRA 108.

[22] Id. at 117.

[23] Id. at 115.

[24] Heirs of Rafael Magpily v. De Jesus, G.R. No. 167748, November 8, 2005, 474 SCRA 366, 378.

[25] Supra note 20 at 115.

[26] 333 Phil. 331, 340 (1996).

[27] Rollo, p. 62.

[28] Heirs of Fernando Vinzons v. Court of Appeals, 374 Phil. 146, 152 (1999).

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