

SPOUSES ROLANDO AND SUSIE GOLEZ, PETITIONERS, VS. HEIRS OF DOMINGO BERTULDO, NAMELY: ERINITA BERTULDO-BERNALES, FLORENCIO BERTULDO, DOMINADOR BERTULDO, RODEL BERTULDO AND ROGER ...

G.R. No. 201289. May 30, 2016

Ponente: BRION, J.

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BRION, J.:

We resolve the petition for review on certiorari filed by petitioners-spouses Rolando and Susie Golez (Sps. Golez) assailing the March 18, 2011 resolution[1] and March 8, 2012 resolution[2] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 05741 on the ground that respondents Heirs of Domingo Bertuldo (collectively referred to in this case as respondents) have no cause of action for unlawful detainer.

The Facts

The dispute involves two neighboring unregistered parcels of land located at Roxas, Capiz,[3] designated as Lot 1024[4] and Lot 1025.[5]

In 1976, Benito Bertuldo (Benito) sold Lot 1024 to Asuncion Segovia acting for her daughter, Susie Golez.[6] They executed a Deed of Absolute Sale dated December 10, 1976, clearly indicating the lot's metes and bounds.[7]

After the sale, the Sps. Golez started the construction of their house on Lot 1025[8], instead of on Lot 1024.

Domingo Bertuldo (Domingo), Benito's first cousin[9], claimed ownership over Lot 1025 and protested against the Sps. Golez's house construction.[10] In response, the Sps. Golez assured Domingo that the construction was being done on Lot 1024.[11]

Sometime in 1993 and after Domingo's death, the respondents conducted a relocation survey on Lot 1025.[12] The relocation survey revealed that the Sps. Golez's house stood on Lot 1025.[13] The respondents confronted the Sps. Golez with this result.

The Sps. Golez claimed that Benito clearly pointed to Susie Golez the natural boundaries of Lot 1025 whose entire area was the subject of the sale between Asuncion Segovia and Benito.[14] To correct the alleged error in the sale, Asuncion Segovia and Benito executed an Amended Deed of Absolute Sale[15] in 1993 to change the stated property sold as "Lot 1024" to "Lot 1025" including the specification of the metes and bounds of Lot 1025.[16]

Case for Quieting of Title

Proceeding from the Amended Deed of Absolute Sale, the Sps. Golez, on August 4, 1993, filed with the Regional Trial Court (RTC) in Roxas City a Complaint for Quieting of Title[17] over Lot 1025 against the respondents.

The RTC dismissed the Sps. Golez's complaint and held that they purchased Lot 1024, not Lot 1025, from Benito.[18]

The RTC decision was subsequently affirmed by both the CA and this Court through a resolution docketed as SC G.R. No 178990 entitled Spouses Rolando and Susie Golez vs. Heirs of Domingo Bertuldo, namely: Genoveva Bertuldo, et al. [19] The Sps. Golez sought reconsideration of the Court's ruling; the Court denied the motion with finality through its Order dated January 28, 2008.[20]

Meanwhile, the respondents filed an application[21] for free patent over Lot 1025 with the Community Environment and Natural Resources Office (CENRO), Roxas City, on December 1, 2007. Susie Golez contested the respondents' application and filed her own application[22] for free patent over Lot 1025.[23]

The Sps. Golez continued their possession of Lot 1025 despite the respondents' demand that the Sps. Golez vacate the property.[24]

The Present Case for Unlawful Detainer

On February 17, 2009, the respondents filed a Complaint for Unlawful Detainer[25] against the Sps. Golez with the Municipal Circuit Trial Court (MCTC) of President Roxas, Capiz, in Civil Case No. 507,[26]

The Sps. Golez filed their Answer[27] and averred the following: first, the respondents' application for free patent over Lot 1025 negates their claim of ownership since they expressly acknowledged that the subject lot forms part of the public domain.[28]

Second, the ejectment complaint must be dismissed since there was no tolerance from the start of the Sps. Golez' possession of Lot 1025. To stress, the late Domingo Bertuldo objected and protested against the construction of the house.[29]

Upon motion by the Sps. Golez, the MCTC ordered the conduct of a relocation survey. The survey result showed that 99.99% of the house of Sps. Golez occupied Lot 1025.[30]

The MCTC Ruling

The MCTC, in its decision dated September 20, 2010,[31] decided in favor of the respondents and ordered the Sps. Golez to:

- Vacate and remove their house on the subject Lot 1025 and peacefully deliver its possession to the plaintiffs (herein respondent heirs of Domingo Bertuldo);
- Pay One Thousand Pesos (P1,000.00) per month as reasonable rent for the occupancy of the subject lot starting from the date of the last demand to vacate up to the time that they vacate the same;
- Pay the amount of P20,000.00 representing attorney's fees plus P5,000.00 as litigation expenses and costs of the suit.

The MCTC recognized that what the Sps. Golez actually bought from Benito was Lot 1024 which issue has already been decided with finality by no less than the Supreme Court.[32] Since the survey result showed that the Sps. Golez's entire house occupies Lot 1025, the Sps. Golez are in unlawful possession of Lot 1025 under an erroneous claim of ownership.[33]

The MCTC also held that the Sps. Golez's possession of Lot 1025 was originally lawful because they believed that they bought Lot 1025 from Benito Bertuldo, as evidenced by the execution of the Amended Deed of Absolute Sale and the filing of the quieting of title case against the respondents.[34] Their possession became illegal when

the RTC dismissed the quieting of title case and ruled that the Sps. Golez bought Lot 1024, not Lot 1025.[35]

On appeal to the RTC, the Sps. Golez reiterated their argument that there is no cause of action for unlawful detainer because Domingo's protest over the Sps. Golez's house construction on Lot 1025 negates the presence of tolerance which is an essential element of an action for unlawful detainer.[36]

In addition, the Sps. Golez argued that the complaint, which should have been for forcible entry, is already barred by prescription.[37]

The RTC Ruling

In its decision dated January 4, 2011, the RTC[38] dismissed the appeal and affirmed the MCTC decision in toto.

The RTC held that the continued stay of the Sps. Golez on Lot 1025, despite the respondents' demand for them to vacate the property and the finality of the Court's decision in the quieting of title case - which declared that the Sps. Golez do not own Lot 1025 - constituted the act of unlawfully detaining the property from its owner.[39]

The RTC explained that there was no tolerance or permission on the part of Domingo on the construction of the Sps. Golez house on Lot 1025 because the Sps. Golez assured him that the construction was done on Lot 1024.[40]

When, however, the 1993 relocation survey result showed that the Sps. Golez house stood on Lot 1025, the respondents immediately confronted the Sps. Golez about the result.[41] The Sps. Golez, instead of making representations with the respondents about the matter, filed a civil action for quieting of title which interrupted the one-year prescriptive period for the respondent heirs to file an action for unlawful detainer.[42]

The RTC found that the Supreme Court's Order denying the motion for reconsideration on the civil action for quieting of title case was only received by the respondent heirs on March 7, 2008.[43] Since the complaint for unlawful detainer was filed on February 17, 2009, or eleven (11) months and fifteen (15) days from their receipt of the Order, the action for unlawful detainer was filed within the one-year prescriptive period.[44]

The Sps. Golez appealed the RTC's decision and contended that the respondents' application for free patent over Lot 1025 is a supervening event that contradicts their position that they are the lawful and rightful owners of the subject property.[45] Hence, the supervening event should be considered notwithstanding the decision in the quieting of title case that the Sps. Golez do not own Lot 1025.[46]

Further, the Sps. Golez argued that the prudent way to proceed with the case is for the CA to wait for the resolution of the Secretary of the Department of Environment and Natural Resources (DENR resolution) on the respondents' free patent application over Lot 1025.[47]

The CA Ruling

In its Resolution[48] dated March 18, 2011, the CA dismissed the appeal and affirmed the MCTC and RTC decisions.[49] The CA held that it does not need to wait for the DENR Secretary resolution on the respondents' free patent application over Lot 1025 because the Supreme Court has already ruled that the respondents are the lawful and rightful owners of Lot 1025.[50]

On April 18, 2011, the Sps. Golez filed a Motion for Reconsideration[51] on the CA Resolution and, on June 10, 2011, a Supplemental Motion.[52] The Sps. Golez manifested that the Office of the DENR Secretary rendered a decision, awarding a 400-square meter portion, out of the 1,484 square meter total area, of Lot 1025 to the Sps. Golez and that the same should be considered by the CA.[53]

In a Resolution[54] dated March 8, 2012, the CA denied the motions reasoning that the Sps. Golez merely reiterated the same matters considered and passed upon in the earlier CA resolution.

The Petition

The Sps. Golez raises the following issues before us:

I.

WHETHER OR NOT THE UNLAWFUL DETAINER CASE FILED BY THE RESPONDENTS AGAINST THE PETITIONERS WAS PROPER.

II.

WHETHER OR NOT THE APPLICATION FOR FREE PATENT FILED BY THE RESPONDENTS OVER LOT 1025 IS A SUPERVENING EVENT THAT SHOULD HAVE EXPUNGED THE DECISION IN THE QUIETING OF TITLE CASE.[55]

OUR RULING

We grant the petition.

The core issue in this case is whether an action for unlawful detainer is the proper remedy.

Section 1, Rule 70 of the Revised Rules of Court, states that a person deprived of possession of land "by force, intimidation, threat, strategy, or stealth," or a person against whom the possession of any land "is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied," 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."

The Rule defines two entirely distinct causes of action, to wit: (a) action to recover possession founded on illegal occupation from the beginning — forcible entry; and (b) action founded on unlawful detention by a person who originally acquired possession lawfully — unlawful detainer.[56]

The law and jurisprudence leave no doubt that what determines the cause of action is the nature of the defendants' entry into the land. If the entry is illegal, then the cause of action against the intruder is forcible entry. If, on the other hand, the entry is legal but thereafter possession becomes illegal, the cause of action is unlawful detainer. The latter must be filed within one year from the date of the last demand.[57]

No cause of action for an unlawful detainer.

Unlawful detainer is a summary action for the recovery of possession of real property. This action may be filed by 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. A complaint for unlawful detainer must allege that: (a) the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them; (b) the defendant's possession became illegal when the plaintiff demanded that the defendant vacate the subject property due to the expiration or termination of the right to possess under the contract; (c) the defendant refused to heed such demand; and (d) the case for unlawful detainer is instituted within one year from the date of last demand.[58]

The allegations in the complaint determine both the nature of the action and the jurisdiction of the court. The complaint must specifically allege the facts constituting unlawful detainer. In the absence of these factual allegations, an action for unlawful detainer is not the proper remedy and the municipal trial court does not have jurisdiction over the case.[59]

In the Complaint,[60] the respondents presented the following allegations to show unlawful detainer:

x x x

3.

During his lifetime, Domingo Bertuldo is the absolute owner and actual possessor of Lot 1025, Pilar Cadastre situated at Barangay Aranguel, Pres. Roxas, Capiz x x x;

5.

Sometime on December 10, 1976, defendant Susie Golez, through her mother, Asuncion Segovia, acquired from Benito Bertuldo, a piece of real property, Lot 1024, Pilar Cadastre, containing an area of 590 square meters situated at Barangay Aranguel, Pres. Roxas, Capiz x x x;

6.

Thereafter, the defendants constructed their residential house on the property; however, Domingo Bertuldo observed that a portion of the house is being constructed on his property, Lot 1025, Pilar Cadastre, for this reason, he made known his objections and protestations to its constructions.

7.

Defendants completely disregarded the objections and protestations made by Domingo Bertuldo. Instead, they assured him that the house is being constructed on their property, Lot 1024, Pilar Cadastre, thus, defendants succeeded in constructing their residential house.

8.

Sometime in 1993, after the death of Domingo Bertuldo, his heirs, the plaintiffs caused the relocation survey of their property, Lot 1025, Pilar Cadastre. The relocation survey conducted revealed that portion of the house of defendants was constructed on Lot 1025, Pilar Cadastre;

9.

Plaintiffs then confronted the defendants with the result of the relocation survey, however, instead of making representations with them for the continued use of a portion of their property, Lot 1025, Pilar Cadastre, a case was filed by the defendants against them x x x;

10.

Sometime on March 31, 2000, after trial on the merits, a decision was rendered by the Regional Trial Court, Branch 14, Roxas City, dismissing the complaint filed by the defendants x x x;

17.

Defendants are in possession of a portion of Lot 1025, Pilar Cadastre, wherein a portion of their house was constructed by reason of the tolerance and benevolence on the part of the plaintiffs;

18.

The said tolerance and benevolence extended were withdrawn when sometime on November 11, 2008, demand was sent by plaintiffs to defendants, for them to vacate and remove a portion of the house belonging to them and constructed on Lot 1025 xxx

x x x

21.

Due to refusal of the defendants to vacate and remove their house on Lot 1025, Pilar Cadastre, plaintiffs were left with no recourse but to cause the filing of this instant case xxx. [emphases supplied]

The respondents' allegations in the Complaint are contrary to the requirements for an unlawful detainer case. In an unlawful detainer, the possession of the defendant was originally legal and his possession was permitted by the owner through an express or implied contract.[61]

In the present case, paragraph 6 of the complaint clearly characterized the Sps. Golez's possession of Lot 1025 as unlawful from the start and bereft of contractual or legal basis. Domingo did not tolerate the possession of Sps. Golez since he had immediately objected and protested over the construction of Sps. Golez's house on Lot 1025. Notably, the RTC expressly found that there was no tolerance or permission on the part of Domingo on the construction of the Sps. Golez house on Lot 1025.[62]

Since tolerance has not been effectively alleged in the complaint, the complaint fails to state a cause of action for unlawful detainer. Therefore, the MCTC had no jurisdiction over the respondents' complaint.

Even assuming arguendo that the complaint sufficiently stated a cause of action, the respondents still failed to prove that they or Domingo tolerated the Sps. Golez's possession on account of an express or implied contract between them.

In *Sps. Valdez v. Court of Appeals*, [63] the Court ruled that where the complaint did not satisfy the jurisdictional requirement of a valid cause for unlawful detainer, the municipal trial court had no jurisdiction over the case. Thus:

To justify an action for unlawful detainer, it is essential that the plaintiffs supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy.[64]

To emphasize, the respondents' allegation of "tolerance" in the Complaint is unsubstantiated by the evidence on record and contradicted by the allegation that the Sps. Golez's entry on Lot 1025 was unlawful from the very beginning.

In *Sarona, et al. v. Villegas, et al.*, [65] the Court cited Prof. Arturo M. Tolentino's definition and characterizes "tolerance" in the following manner:

Professor Arturo M. Tolentino states that acts merely tolerated are "those which by reason of neighborliness or familiarity, the owner of property allows his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who permits them out of friendship or courtesy." He adds that: "[t]hey are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, permits others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well." And, Tolentino continues, even though "this is continued for a long time, no right will be acquired by prescription." Further expounding on the concept, Tolentino writes: "There is tacit consent of the possessor to the acts which are merely tolerated. Thus, not every case of knowledge and silence on the part of the possessor can be considered mere tolerance. By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission." [emphasis supplied]

The Court has consistently adopted the position that tolerance or permission must have been present at the beginning of possession. If the possession was unlawful from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed.[66] Thus in *Sarona*, the Court explained:

A close assessment of the law and the concept of the word "tolerance" confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer — not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons: First. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress — in the inferior court — provided for in the rules. If one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. Second. If a forcible entry action in the inferior court is allowed after the lapse of a number of years, then the result may well be that no action of forcible entry can really prescribe. No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court — upon a plea of tolerance to prevent prescription to set in — and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one year time-bar to the suit is but in pursuance of the summary nature of the action.[67]

It is not the first time that this Court adjudged contradictory statements in a complaint for unlawful detainer as a basis for dismissal.[68] In *Unida v. Heirs of Urban*,[69] the plaintiffs claim that he merely tolerated the defendant's possession was contradicted by the allegation that the entry to the subject property was unlawful from the very beginning. The Court then ruled that the unlawful detainer action should fail.

In these lights, the Sps. Golez's possession should be deemed illegal from the beginning and the proper action which the respondents should have filed was one for forcible entry. An action for forcible entry, however, prescribes one year reckoned from the date of the defendant's actual entry into the land.

In the present case, the Sps. Golez entered the property immediately after the sale in 1976. Thus, their action for forcible entry had already prescribed.

Since the action for forcible entry has already prescribed, one of the remedies for the respondent heirs to recover the possession of Lot 1025 is *accion publiciana*. *Accion publiciana* is the plenary action to recover the right of possession which should be brought to 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 the defendant had turned the plaintiff out of possession or the defendant's possession had become illegal, the action will be not one of forcible entry or unlawful detainer, but an *accion publiciana*. [70]

In these lights, we no longer find it necessary to pass upon the other issue raised in the present petition.

WHEREFORE, we hereby GRANT the petition for review on certiorari. The resolutions dated March 18, 2011 and March 8, 2012 of the Court of Appeals in CA-G.R. CEB-SP No. 05741 are REVERSED and SET ASIDE. The complaint for unlawful detainer is, hereby, DISMISSED. No costs.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Mendoza, and Leonen, JJ., concur.

[1] Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Pamjvo-A. Abarintcs and Myra V. Garcia-Fernandez, rollo, p. 32 .

[2] Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Pampio A.

Abarintos and Ramon Paul L. Hernando.

[3] Presently known as Roxas city in Capiz province.

[4] Records, p. 293: Lot 1024 has an area of 590 square meters.

[5] Records, p. 293: Lot J025 has an area of 1,484 square meters.

[6] Asuncion Segovia acted as the petitioner Susie Golez' trustee when she bought Lot 1024. See Records, p. 15, 16 and 293.

[7] Records, p. 15.

[8] Rollo, p. 11.

[9] Records, p. 294.

[10] Rollo, p. 11.

[11] Records, p. 342.

[12] Records, p. 342.

[13] Records, p. 342.

[14] Rollo, p. 11.

[15] Records, p. 21.

[16] Rollo, p. 11.

[17] Docketed as Civil Case No. 6341, RTC Br. 14, Roxas City 14, Roxas City. See Records, at 16-19.

[18] Records, p. 293.

[19] Id. at 48-49,293.

[20] Id. at 49.

[21] Id. at 76.

[22] Id. at 88.

[23] Rollo, p. 12.

[24] Id.

[25] Docketed as Civil Case No. 507, MCTC 6, Pres. Roxas, Capiz. Records, pp. 1-7.

[26] Rollo, p. 33.

[27] Records, p. 56-74.

[28] Id. at 57.

[29] Id. at 70-72.

[30] Id.

[31] Id at 289-197.

- [32] Id at 293.
- [33] Id.
- [34] Id. at 295.
- [35] Id at 295.
- [36] Id. at 342.
- [37] Id. at 342.
- [38] Id. at 341-343.
- [39] Id. at 343.
- [40] Id at 342.
- [41] Id at 342.
- [42] Id at 342-343.
- [43] Id at 343.
- [44] Id at 343.
- [45] Rollo, pp. 16-17.
- [46] Id. at t 17.
- [47] Id at 33.
- [48] Id. at 32-3 3.
- [49] Rollo, pp. 32-33.
- [50] Id. at 33.
- [51] Id. at 39-42.
- [52] Id. at 43-45.
- [53] Id at 43-44.
- [54] Id. at 36-37.
- [55] Id. at 20-21.
- [56] Sarona, et al. v. Villegas, et al., 131 Phil. 365, 369 (1968).
- [57] Id. at 369.
- [58] Jose v. Alfuerio, et. al., 699 Phil. 307, 316 (2012).
- [59] Id.
- [60] Records, pp. 1-6.
- [61] Jose v. Alfuerio, et al., supra note 58.
- [62] Records, p. 342.

[63] 523 Phil. 39, (2006).

[64] Id. at 47.

[65] Supra note 56, at 372-373.

[66] Supra note 56, at 319.

[67] Supra note 56, at 373

[68] Supra note 58, at 319.

[69] 499 Phil. 64, 70 (2005).

[70] Supra note 63, at 46.

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