

**TERESITA DAYANDAYAN, YOLLY D. LAGUNA, CLARA
“CARING” TALLE, MR. & MRS. RODRIGO RIOS, AND
MR. & MRS. REDEN BIGNAY, PETITIONERS, VS. SPOUSES
EDUARDO P. ROJAS AND ENRIQUITA A. ROJA...**

G.R. No. 227411. July 15, 2020

Ponente: GAERLAN, J.

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GAERLAN, J.:

This resolves the Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court filed by petitioners Teresita Dayandayan (Dayandayan), Yolly D. Laguna (Laguna), Clara Talle (Talle), Mr. and Mrs. Rodrigo Rios (Spouses Rios) and Mr. and Mrs. Reden Bignay (Spouses Bignay), praying for the reversal of the September 30, 2015 Decision[2] and the July 22, 2016 Resolution[3] of the Court of Appeals (CA) Cebu City in CA-G.R. SP No. 06815.

The Antecedents

Spouses Eduardo P. Rojas and Enriquita A. Rojas (respondents) are the lawful owners of Lot No. 635 located at Marvel Isabel, Leyte, containing an area of about 435 square meters (subject property). They purchased the subject property from Generoso and Julieta Pinar (Pinar), as evidenced by a Deed of Sale[4] executed on March 9, 1997.

Allegedly, petitioners Talle and Dayandayan asked permission from respondents to construct their houses on a portion of the subject property, with the promise that they would vacate upon the respondents' demand. Out of compassion, the respondents allowed the petitioners to stay without charging any rental fees. Later, Talle's and Dayandayan's relatives, Laguna, spouses Rios, and spouses Bignay likewise stayed in the subject property.[5]

Sometime in January 2009, respondents asked the petitioners to vacate the subject property. Petitioners refused to comply.[6]

On February 8, 2009, respondents reiterated their demand for the petitioners to vacate.[7] Still, the demand remained unheeded.[8]

On April 17, 2009, the respondents filed a Complaint for Unlawful Detainer[9] against the petitioners before the Municipal Circuit Trial Court of Merida Isabel Circuit, Isabel, Leyte (MCTC).

In their Answer with Counterclaim,[10] the petitioners claimed that their houses stand on government property and are situated outside of the respondents' lot. They pointed out that Pinar's lot, which respondents acquired, only had an area of 306 square meters per Tax Declaration No. 17-0001-00593-R13.[11] They related that in 1983, Talle and her husband built a house on a foreshore area, which later became the back of the dry and wet public market of Poblacion, Isabel, Leyte. Meanwhile, in 1984, Dayandayan and her late husband built a house along the side of the pier at Poblacion.[12]

Sometime in 1990, the municipal government of Isabel, Leyte reclaimed the foreshore area where the house of Dayandayan stood. The municipal mayor caused her house to be relocated to a portion of the reclaimed area and her structure was placed near the house of Talle at the back of the public market.[13]

Ruling of the MCTC

On October 1, 2010, the MCTC rendered a Decision[14] granting the complaint for unlawful detainer.

The MCTC ruled that the respondents as the owners of the subject property are entitled to its physical possession. The MCTC noted that the respondents purchased the subject property on March 9, 1997 and have been religiously paying the property taxes and other fees relative thereto.[15]

The dispositive portion of the MCTC ruling reads:

WHEREFORE, by preponderance of evidence, judgment is hereby rendered in favor of Plaintiffs-Spouses [respondents] Eduardo and Enriquita Rojas. Thereby, Defendants Teresita Dayandayan, Yolly D. Laguna, Clara "Caring" Talle, Spouses Rodrigo and Virginia Rios and Spouses Reden and Melody Bignay are hereby ordered, to wit:

1. To vacate the premises (Lot No. 635) occupied by them and to turn-over the possession thereof to plaintiffs;
2. To pay the plaintiffs, the sum of Twenty Thousand (Php 20,000.00) Pesos as Attorney's fees and
3. To reimburse the plaintiffs the litigation expenses amounting to Five Thousand (Php 5,000.00) Pesos.

SO ORDERED.[16]

Aggrieved, the petitioners filed an appeal with the RTC.

Ruling of the RTC

In a Decision[17] dated May 13, 2011, the RTC reversed the MCTC's ruling. The RTC dismissed the complaint for unlawful detainer due to lack of jurisdiction. It noted that the respondents anchored their case for unlawful detainer on their alleged tolerance of the petitioners' stay in their lot.[18] However, the respondents failed to prove the fact of tolerance. On the contrary, the records showed that the petitioners have been residing in the subject property long before the respondents purchased the same on March 9, 1997.[19] Thus, it was improbable for the petitioners to ask permission from the respondents to construct their houses sometime in 1997.[20] As such, the RTC opined that the respondents should avail of a different remedy to obtain possession of the subject property.[21]

The dispositive portion of the RTC ruling reads:

WHEREFORE, the instant appeal is GRANTED. The instant case is ordered DISMISSED for lack of jurisdiction and the assailed Decision of the MCTC Isabel-Merida dated October 1, 2010 is hereby SET ASIDE and VACATED ordering the plaintiffs-appellees [respondents] to respect the physical possession of the defendants-appellants [petitioners] over the affected portions of Lot No. 635 without prejudice to their right to avail of other remedies provided by law to recover possession of the subject property. No pronouncement as to costs.

SO ORDERED.[22]

Respondents filed a Motion for Reconsideration.

In an Order[23] dated March 26, 2012, the RTC denied the Motion for Reconsideration for lack of merit. However, the RTC clarified that the case for unlawful detainer was dismissed not due to lack of jurisdiction but

rather due to lack of evidence, mainly of the alleged tolerance granted by the respondents unto the petitioners.

The decretal portion of the Order states:

WHEREFORE, premises considered, the Decision of 13 May 2011 being assailed by herein plaintiffs-appellees (on motion for reconsideration) is partially modified in that the dismissal of the instant case (on appeal to this Court) is not for lack of jurisdiction but for lack of evidence. Consequently, except for said modification the rest of the dispositive portion in the said Decision of May 13, 2011 is maintained. The instant motion for reconsideration is therefore DENIED for lack of merit.

SO ORDERED.[24]

Dissatisfied with the ruling, the respondents filed a Petition for Review under Rule 42 of the Rules of Court with the CA.

Ruling of the CA

On September 30, 2015, the CA rendered the assailed Decision[25] reversing the RTC's pronouncement. The CA noted that the respondents sufficiently alleged in their complaint all the necessary allegations that make a case for unlawful detainer based on tolerance. The respondents stated in their Joint Affidavit the overt acts which prove how the petitioners obtained permission from them to occupy the subject property.[26]

Moreover, the CA rejected the petitioners' claim that their houses were built on the reclaimed area, and not on the subject property. The CA held that the Commissioner's Report and Tax Declaration, among others, confirmed that the subject property has been classified as a residential land since 1979. As such, it cannot form part of the reclaimed area.[27]

Furthermore, the CA opined that even assuming that Lot No. 635 forms part of the reclaimed area, the petitioners failed to prove that their entry into the subject land preceded respondents' acquisition thereof. The declaration of the RTC that the petitioners entered the property sometime in 1990 was merely based on the latter's affidavits.[28] Overall, the CA held that the preponderance of evidence tilts in favor of the respondents.[29]

The dispositive portion of the CA ruling reads:

WHEREFORE, the petition is hereby GRANTED. The Decision dated May 13, 2011 and Order dated March 26, 2012 of the Regional Trial Court, Branch 12, Ormoc City in Civil Case No. R-Orm-10-100121-AP are hereby SET ASIDE. The Decision dated October 1, 2010 of the Municipal Circuit Trial Court, Merida-Isabel Circuit is REINSTATED.

SO ORDERED.[30]

Undeterred, the petitioners filed the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court.

The Issue

The crux of the instant petition is who between the petitioners and the respondents are entitled to the possession of the subject property.

The petitioners claim that the respondents failed to prove the fact of tolerance.[31] They maintain that they did not have any contract, express or implied, with the respondents or with the latter's predecessors-in-interest.[32] They argue that it was impossible for the respondents to have given permission or tolerated their stay, considering that they (petitioners) had been residing in the subject property long before the respondents purchased the same in 1997.[33] Respondents' claim of tolerance was merely based on an Affidavit which was self-serving.[34] Likewise, the respondents failed to present a Joint Affidavit from the Pinar spouses stating that they had tolerated

petitioners' stay on the subject property.[35]

Alternatively, the petitioners urge that should the Court find that the respondents have a cause of action, then the proper party would be the Municipality of Isabel, Leyte,[36] as it was the latter who ordered the petitioners' relocation to the subject lot.[37]

On the other hand, the respondents point out that the issue of tolerance was not raised during the proceedings before the MCTC but was belatedly raised on appeal.[38] They claim that to rule on such matter would violate their right to due process.[39] Nonetheless, the respondents assert that they sufficiently proved the fact of tolerance.

Moreover, the respondents insist that the area where the petitioners' shanties were built belong to them, and not to the municipality of Isabel, Leyte.[40] The Commissioner's Report stated that the structures were located in the subject property.[41] Likewise, the Tax Declaration described the subject lot as residential even prior to the reclamation project allegedly undertaken in 1990.[42] They maintain that as the owners of the subject property, they are entitled to its possession.[43]

Lastly, the respondents aver that the petitioners failed to prove their claim that their houses have been existing on the subject property prior to the respondents' acquisition thereof.[44]

Ruling of the Court

The petition is impressed with merit.

The Owner of Real Property May Not Wrest Possession From the Lawful Occupant

Essentially, the owner of real property has the right to enjoy and dispose of a thing, and to file an action against the holder and possessor of the same in order to recover it.[45] This stems from the fact that the right to possession is an attribute of ownership. However, ownership by itself, does not grant the owner an unbridled authority to wrest possession from the lawful occupant.[46] Rather, to recover possession, the owner must avail of the proper judicial remedy and satisfy all the conditions necessary for the chosen action to prosper.[47] These remedies can be an accion reivindicatoria, action publiciana, or accion interdictal.

Particularly, an accion reivindicatoria is a suit to recover possession of a parcel of land as an element of ownership.[48] It is filed before the proper Regional Trial Court. The judgment in said case determines the ownership of the property and awards possession to the lawful owner.[49]

Meanwhile, an accion publiciana is a plenary action to recover the right of possession, and is brought before the proper RTC when the dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession independent of title.[50]

Finally, an accion interdictal is a summary action that determines the right to physical possession, independent of ownership. It is cognizable by the proper Municipal or Metropolitan Trial Court. An accion interdictal comprises two distinct causes of action – forcible entry and unlawful detainer. They are distinguished mainly by the nature of the deforciant's entry into the property. Specifically, in forcible entry, possession is illegal at the outset, as entry was effected through force, intimidation, strategy, threats, or stealth. On the other hand, in unlawful detainer, possession is initially lawful as it stems from an express or implied contract, but subsequently becomes illegal when the deforciant withholds possession after the expiration or termination of his/her right. Both actions for forcible entry and unlawful detainer must be brought within one year from the date of actual entry on the land, or

from the date of last demand, as the case may be.[51]

On various occasions, the Court stressed that the owner of real property may not conveniently usurp possession from the lawful possessor through the simple expedient of filing an accion interdictal. This was the Court's warning in *Quijano v. Amante*,[52] *Muñoz v. CA*,[53] and *Javelosa v. Tapus*. [54]

In *Muñoz*, the Court refused to grant the owner possession notwithstanding the latter's presentation of a Torrens title. Rather, the Court ruled that to obtain possession, the owner must ventilate his claim by filing the proper action before the RTC:

If the private respondent is indeed the owner of the premises and that possession thereof was deprived from him for more than twelve years, he should present his claim before the Regional Trial Court in an accion publiciana or an accion reivindicatoria and not before the Municipal Trial Court in a summary proceeding of unlawful detainer or forcible entry. For even if he is the owner, possession of the property cannot be wrested from another who had been in possession thereof for more than twelve (12) years through a summary action for ejectment.

Although admittedly petitioner may validly claim ownership based on the muniments of title it presented, such evidence does not responsibly address the issue of prior actual possession raised in a forcible entry case. It must be stated that regardless of actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by a strong hand, violence or terror. Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his prior possession, if he has in his favor priority in time, he has the security that entitles him to remain on the property until he is lawfully ejected by a person having a better right by accion publiciana or accion reivindicatoria.[55] (Citations omitted and emphasis supplied)

In the same vein, in *Javelosa*, the Court favored the possessors who have been residing in the property for 70 years over the owner who failed to prove the fact of tolerance in the unlawful detainer case. The Court cautioned that an owner cannot conveniently usurp possession of the property without availing of the proper remedy to regain possession:

As a final note, an important caveat must be laid down. The Court's ruling should not in any way be misconstrued as coddling the occupant of the property, at the expense of the lawful owner. Rather, what this resolution seeks to impress is that even the legal owner of the property cannot conveniently usurp possession against a possessor, through a summary action for ejectment, without proving the essential requisites thereof. Accordingly, should the owner choose to file an action for unlawful detainer, it is imperative for him/her to first and foremost prove that the occupation was based on his/her permission or tolerance. Absent which, the owner would be in a better position by pursuing other more appropriate legal remedies.[56]

In the case at bar, the respondents filed an action for unlawful detainer to recover possession of the subject property. In making this choice, they bore the correlative burden to sufficiently allege and prove by a preponderance of evidence all the jurisdictional facts for such action to prosper.

In An Action for Unlawful Detainer, Tolerance or Permission Must Be Present From the Beginning of the Possession and Must Be Proven Clearly and Distinctly

In all actions for unlawful detainer, the fact of permission or tolerance serves as a key jurisdictional element. Thus, for the action to prosper, the claimant must allege and prove that:

(i)

initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;

(ii)

eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;

(iii)

thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(iv)

within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[57]

A perusal of the Complaint filed by the respondents before the MCTC reveals that their action for unlawful detainer was premised on their tolerance of the petitioners' stay therein. As alleged in the Complaint:

x x x x

4. That the plaintiffs are the lawful owner[s] and possessor[s] of the [subject property], having acquired the same through purchase by virtue of a cuerpo cierto sale from its owners Julieta Pinar and Generoso Pinar as evidenced by [a] Deed of Sale executed on March 9, 1997, and Affidavit of Non-Improvement executed on April 7, 1997 x x x;

5. That defendants Teresita Dayandayan and Clara Talle asked plaintiffs they be allowed to occupy a portion of the aforesaid parcel of land and construct their house on condition that they would vacate upon demand by plaintiffs;

6. That out of compassion, plaintiffs tolerated the aforesaid defendants to occupy on that condition, without paying any rental;

7. That in the process, said defendants Teresita Dayandayan and Clara Talle, let their respective children stay with them; thus defendants Yolly D. Laguna, daughter of Teresita Dayandayan, and Mr. & Mrs. Rodrigo Rios and Mr. & Mrs. Reden Bignay, children of Clara Talle, are occupying the house that their parents built on the portion of plaintiffs' property;

8. That on January 2009, plaintiffs verbally demanded from all defendants to vacate the premises as plaintiffs would now use their lot. However, defendants refused to vacate;

x x x x

10. That to give them another chance, on February 8, 2009, plaintiffs demanded from defendants to vacate the premises, but despite receipt of the demand letter, they refused and still refuse such valid and legal demand. x x x[58] (Emphasis supplied)

Significantly, in the 1968 landmark case of *Sarona, et al. v. Villegas, et al.*,[59] "tolerance" was defined, thus:

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.[60] (Citations omitted and emphasis supplied)

In the same vein, Saronia[61] further impressed the rule that tolerance must be present at the outset of the possession:

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.[62] (Citations omitted)

Over the years, the tenets laid down in Saronia have been consistently affirmed in subsequent rulings. As echoed in *Dr. Carbonilla v. Abiera, et al.*[63] and *Javelosa*, "tolerance always carries with it 'permission' and not merely silence or inaction for silence or inaction is negligence, not tolerance." [64] In *Javelosa*, the Court emphasized that tolerance cannot be confused with indifference or neglect to file an action in court. This doctrine was further reinforced in *Lozano v. Fernandez*,[65] where the Court characterized "tolerance [as] more than mere passivity,"[66] and clarified that "inaction should not be confused with tolerance as the latter transcends silence and connotes permission to possess the property subject of an unlawful detainer case." [67]

Accordingly, in an action for unlawful detainer, the complainant must prove through a preponderance of evidence that he/she consented to the possession of the property through positive acts.[68] There should be supporting evidence on record that would show how and when the respondents entered the property, and who granted them permission to enter.[69] As cautioned in *Padre v. Malabanan*,[70] and *De Guzman-Fuerte v. Estomo*[71] a bare claim of tolerance will not suffice.[72] Consequently, an action for unlawful detainer must be dismissed if the complainant fails to advert to a clear and overt act proving his/her tolerance prior to the questioned occupancy.[73]

Equally important, tolerance must precede the deforciant's entry into the property. Notably, in *Jose v. Alfuerio, et. al.*, *Dr. Carbonilla*, and *Zacarias v. Anacay*,[74] the Court required that tolerance or permission must be present at the outset. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer should be dismissed for being an improper remedy.[75] Corollary thereto, in *Amante*, the Court laid the burden on the plaintiff to prove that the occupant's possession was initially lawful and further, to establish the basis of such lawful possession.[76]

Based on the foregoing tenets, it becomes all too apparent that an action for unlawful detainer fails in the absence of clear proof of an overt act signifying permission or tolerance, coupled with evidence of how and when the

occupation was effected.[77]

The Failure To Raise the Issue of Tolerance Shall Not Bar The Court From Ruling on the Matter

Strangely, the respondents bewail that the issue of tolerance was not raised before the MCTC but was belatedly asserted for the first time on appeal. According to the respondents, to consider such issue at this stage will violate the basic tenets of fair play and due process.

It must be noted at the outset that the Court rejected the same flawed argument in *Jose v. Alfuerio, et al.*:[78]

The petitioner alleges that the respondents had never questioned before the MeTC the fact that their occupancy was by tolerance. x x x

x x x x

Regardless of the defenses raised by the respondents, the petitioner was required to properly allege and prove when the respondents entered the property and that it was the petitioner or his predecessors, not any other persons, who granted the respondents permission to enter and occupy the property. Furthermore, it was not the respondents' defense that proved fatal to the case but the petitioner's contradictory statements in his amended complaint which he even reiterated in his other pleadings.

Although the respondents did not use the word "tolerance" before the MeTC, they have always questioned the existence of the petitioner's tolerance. In their Answer to Amended Complaint, the respondents negated the possibility of their possession of the property under the petitioner and his lessor's tolerance when the respondents alleged to have occupied the premises even before the lessor acquired the property in 1991. They said as much in their Position Paper[.][79]

Moreover, it is bizarre that the respondents backpedaled, suddenly alleging that the issue regarding tolerance "is a new issue, [which the] petitioners raised for the first time on appeal." [80] A simple perusal of the respondents' Complaint before the MCTC reveals that they introduced and alleged the fact of tolerance. They categorically and clearly stated "[t]hat out of compassion, [they] tolerated the aforesaid defendants [petitioners] to occupy on that condition, without paying any rental." [81] In view of their very own assertion, the MCTC included the matter of tolerance as among the disputed issues in the case. [82] Obviously, it was the respondents who first broached the subject of tolerance. They cannot dodge an issue which they themselves introduced.

At any rate, tolerance is a key jurisdictional fact in an action for unlawful detainer, such that the case may not be resolved without passing upon the fact of tolerance or permission.

Respondents Failed to Prove An Overt Act Signifying their Tolerance of Petitioners' Stay in the Subject Property

The respondents' action for unlawful detainer hinges on their alleged "tolerance" of the petitioners' stay in the subject property. Unfortunately however, they failed to adduce evidence to establish their claim.

To begin with, the respondents' tale of tolerance was merely based on vague, self-serving statements. They failed to prove how and when the petitioners entered the subject lot, as well as how and when the permission to occupy was purportedly given. They were unable to point to a specific overt act showing their purported acquiescence. In

fact, they were conspicuously silent about the details, save for their vague assertion that the petitioners approached them for permission to construct a house, and that they "tolerated" the latter's stay.[83] Certainly, the failure to provide specific details engenders doubt on the respondents' purported claim of tolerance.

Ironically, no less than the respondents' own documents cast doubt on their purported claim of permission or tolerance. The Deed of Sale confirms that the respondents acquired the subject property on March 9, 1997, years after the petitioners had begun to reside in the area. Likewise, the Commissioner's Report noting that the houses of the petitioners are within the subject area, and the Tax Declarations classifying the property as residential, do not shed light on the circumstances of the petitioners' entry into the subject property. Relatedly, in *Sabellina v. Buray, et. al.*,^[84] which likewise involved an action for unlawful detainer, the Court rejected the plaintiffs' tax declarations which had no bearing whatsoever in showing how the defendants entered the property.^[85]

In contrast, the petitioners' evidence affirms that they have been residing in the subject property prior to the respondents' purchase of the same. The Affidavits of petitioners Talle^[86] and Dayandayan^[87] indicate that they have been residing in the area since 1983 and 1984, respectively. Although they asserted that the lot was a reclaimed area, this still places them in the property prior to the respondents' acquisition thereof.

In addition, the Affidavits of disinterested persons confirm the petitioners' presence in the area prior to March 9, 1997. Salvador Sipaco^[88] related that in 1990, the municipal government of Leyte undertook a reclamation project, wherein Dayandayan and Talle were called to participate in the meeting. Likewise, Rogelio Nuñez^[89] confirms that the petitioners have been residing in the area prior to the respondents' acquisition. This fact was further bolstered by the Certification of the Municipal Treasurer^[90] which likewise places Dayandayan and Talle in the subject premises in as early as 1990.

It bears noting that the petitioners were able to establish prior possession independent of any express or implied contract with the respondents or their predecessors-in-interest. The fact that the petitioners have been staying in the subject property prior to the respondents' acquisition is essential in the resolution of the instant case. For one, this destroys the respondents' claim that the petitioners approached them for permission to construct a house. It is indeed strange that the petitioners would approach the respondents and ask permission to build a house, when the former have already been residing therein years prior to the latter's entry. Worse, the absence of specific details regarding how and when permission was initially granted is especially troubling considering that the petitioners have been occupying the subject property for more than 20 years.

The issue regarding the nature of the subject lot — whether it is a reclaimed area or part of Lot 635, is immaterial in resolving the matter of possession. For all intents and purposes, the evidence proves that the petitioners were in the subject area prior to the respondents' acquisition thereof. In effect, this negates respondents' contentions that the petitioners asked permission to build a house; that they (respondents) "tolerated" petitioners' stay; and that an express or implied contract to occupy the premises existed between the parties. This disavowal is important considering that said allegations served as the backbone of the respondents' action for unlawful detainer.

It cannot be gainsaid that as the plaintiffs in the action for unlawful detainer, the respondents bore the brunt of proving all the essential requisites for their case to prosper. In doing so, they are reminded of the age-old rule that allegations are not proof. Rather, they must establish their case by a preponderance of evidence, "i.e. by evidence that is of greater weight, or more convincing, than that which is offered in opposition to it,"^[91] which they failed to do.

Similar to the case at bar, in *Sabellina*, the Court rejected the complainant's general and self-serving averments of tolerance:

This evidentiary situation only leaves us with the petitioner's affidavit. The affidavit only makes the sweeping

statement that the respondents entered the subject lot with her consent and occupied it by mere tolerance. The petitioner failed to present convincing proof of her allegation of tolerance. There is no competent evidence to support her claim other than her own self-serving affidavit repeating her allegations in the complaint. Allegations are not evidence and without evidence, bare allegations do not prove facts.[92] (Citations omitted and emphasis supplied)

All told, the action for unlawful detainer must be dismissed due to the respondents' failure to establish the necessary averments for their action to prosper. However, the respondents are not left without a remedy in law. They may avail of other more appropriate legal remedies to obtain possession of the subject property before the proper court.

WHEREFORE, the instant Petition for Review on Certiorari is hereby GRANTED. The September 30, 2015 Decision and the July 22, 2016 Resolution of the Court of Appeals Cebu City in CA-G.R. SP No. 06815 are REVERSED and SET ASIDE. The Order dated March 26, 2012 of the Regional Trial Court is REINSTATED.

SO ORDERED.

Leonen, (Chairperson), Gesmundo, Carandang, and Zalameda, JJ., concur.

[1] Rollo, pp. 4-19.

[2] Id. at 87-93; penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Renato C. Francisco, concurring.

[3] Id. at 94-95.

[4] Id. at 33.

[5] Id. at 30; 138-139.

[6] Id. at 30.

[7] Id. at 36-37.

[8] Id. at 31.

[9] Id. at 29-32.

[10] Id. at 38-43.

[11] Id. at 40.

[12] Id. at 39.

[13] Id.

[14] Id. at 70-77; penned by Presiding Judge Leda L. Nicol.

[15] Id. at 75-76.

[16] Id. at 77.

[17] Id. at 78-83; penned by Presiding Judge Clinton C. Nuevo.

[18] Id. at 82.

[19] Id.

[20] Id.

[21] Id.

[22] Id. at 83.

[23] Id. at 84-86.

[24] Id. at 86.

[25] Id. at 87-93.

[26] Id. at 90.

[27] Id. at 90-91.

[28] Id. at 91-92.

[29] Id. at 92.

[30] Id.

[31] Id. at 15.

[32] Id. at 15-16.

[33] Id. at 13-14.

[34] Id. at 14.

[35] Id.

[36] Id. at 17.

[37] Id.

[38] Id. at 143.

[39] Id. at 144.

[40] Id. at 149-150.

[41] Id. at 149.

[42] Id.

[43] Id. at 150.

[44] Id. at 149.

[45] CIVIL CODE, Art. 428.

[46] *Eversley Childs Sanitarium v. Barbarona*, G.R. No. 195814, April 4, 2018, 860 SCRA 283, 305. (Citation omitted)

[47] Id.

[48] *Heirs of Alfonso Yusingco v. Busilak*, G.R. No. 210504, January 24, 2018, 852 SCRA 631, 640. (Citation

omitted)

[49] Id.

[50] *Suarez v. Sps. Emboy, Jr.*, 729 Phil. 315, 329-330 (2014), citing *Spouses Valdez, Jr. v. CA*, 523 Phil. 39 (2006).

[51] *Javelosa v. Tapus*, G.R. No. 204361, July 4, 2018, 870 SCRA 496, 509-510, citing *Suarez v. Sps. Emboy, Jr.*, supra note 50.

[52] 745 Phil. 40 (2014).

[53] 214 Phil. 216 (1992).

[54] *Javelosa v. Tapus*, supra.

[55] Supra at 225, 227.

[56] *Javelosa v. Tapus*, supra note 51 at 514-515.

[57] *Suarez v. Sps. Emboy, Jr.*, supra note 50 at 330.

[58] Rollo, pp. 30-31.

[59] G.R. No. L-22984, March 27, 1968, 131 SCRA 363.

[60] Id. at 372-373.

[61] Id.

[62] Id. at 373.

[63] 639 Phil. 473 (2010).

[64] Id. at 482.

[65] G.R. No. 212979, February 18, 2019.

[66] Id.

[67] Id.

[68] Id.

[69] *De Guzman-Fuerte v. Estomo*, G.R. No. 223399, April 23, 2018, 862 SCRA 382, 399-400, citing *Ocampo v. Heirs of Bernardino Dionisio*, 744 Phil. 716, 724 (2014).

[70] 532 Phil. 714 (2006).

[71] Supra.

[72] Id. at 400.

[73] *Jose v. Alfuerio*, 699 Phil. 307, 318 (2012).

[74] 744 Phil. 201 (2014).

[75] *Jose v. Alfuerio*, et al., supra.

[76] *Quijano v. Amante*, supra note 52 at 52.

[77] Javelosa v. Tapus, supra note 51 at 513, citing Dr. Carbonilla v. Abiera, et al., supra note 63 at 482.

[78] Jose v. Alfuerio, et al., supra note 73.

[79] Id. at 322-323.

[80] Rollo, p. 143.

[81] Id. at 30.

[82] Id. at 73.

[83] Id. at 30.

[84] 768 Phil. 224 (2015).

[85] Id. at 237.

[86] Rollo, p. 64.

[87] Id. at 62-63.

[88] Id. at 65.

[89] Id. at 66.

[90] Id. at 68.

[91] Zosima Incorporated v. Salimbagat, 694 Phil. 636 (2012), citing RULES OF COURT, Rule 133, Section The New Testament Church of God v. CA, 316 Phil. 330, 333 (1995); and Republic v. Court of Appeals, G.R. No. 84966, November 21, 1991, 204 SCRA 160, 168.

[92] Supra note 84 at 237-238.

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