

PHARMA INDUSTRIES, INC., PETITIONER, VS. HONORABLE MELITON PAJARILLAGA OF THE CITY COURT OF CABANATUAN CITY, NUEVA ECIJA, BRANCH II, SERGIA A. DEL ROSARIO AND “JOHN DOE/S”;, RESP...

G.R. No. 53788. October 17, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Certiorari to review the actuations of the respondent judge in Civil Case No. 8126 of the City Court of Cabanatuan which the plaintiff, the petitioner herein, initiated for the purpose of ejecting the private respondents from a piece of land.

In a "Decision" dated January 7, 1980, the respondent judge dismissed the case for lack of jurisdiction. A motion to reconsider the dismissal was denied, hence the present petition.

The facts and the law as understood by the respondent judge are set forth in his "Decision" which is hereby reproduced in full:

"This is a complaint for Ejectment filed by the plaintiff against the defendant. The plaintiff in its complaint alleges that on November 12, 1977, the defendant Sergia A. del Rosario executed in favor of the plaintiff a Deed of Sale with Right to repurchase over a piece of land duly registered and situated at Cabanatuan City, together with all improvements and which land is covered with TCT No. 12481, now TCT No. 35940, that the defendant Sergia del Rosario executed to exercise her right of redemption in accordance with the Provision of Annex "A", Deed of Sale with Right to Repurchase, which expired November 12, 1978, and despite notice to her the plaintiff was constrained to file a petition for consolidation of ownership, Annex "B"; that on April 3, 1979, the Honorable Virgilio D. Pobre-Yñigo, promulgated a decision in favor of the plaintiff and against the defendant, declaring the plaintiff to be the full owner of the property and ordering the Register of Deeds of Cabanatuan City, to cancel the old title and issue a new title, TCT No. T-35940 in the name of the plaintiff; that on June 8, 1979, the plaintiff sent a letter to the defendant and all person claiming ownership, to vacate the premises in question; that despite receipt of Annex "E", by the defendant on June 13, 1979, she failed and refused and still fails to vacate the premises without justification.

The defendant filed her answer, admitting the allegations on Par. 1, 2, & 3, and denied the allegation in Par. 4, alleging that the defendant thru her representative Alfredo del Rosario verbally agreed to the counsel of the plaintiff, that after recomputation of the amount demanded being enormous and unconscionable, the latter should pay her obligation but contrary to the agreement to plaintiff thru counsel, did not honor the same and still continued the prosecution in this case, until the decision was rendered by this Court, to the damage and prejudice of the defendant, who is ready and able to pay her obligation; that defendant admitted the allegation in Par. 5 of the answer of the complaint, as far as the decision rendered for consolidation, but denies the rest of the allegations, because of the agreement which was dishonored by the plaintiff; that defendant also admitted the allegations in Par. 6, 7, & 8, but denies the allegation in Par. 9.

On November 28, 1979, the plaintiff filed a motion for judgment on the pleading, on the ground that the defendant admitted all the material averments of the complaint and does not tender at all an issue. The defendant filed an opposition to the motion of judgment on the pleading, and a motion to dismiss, on the ground that this Court has no jurisdiction, and that it is the Court of First Instance, which has jurisdiction over the action, (Roman Catholic Bishop of Cebu versus Mangaron, 6 Philippines 286, 291). The complaint filed by the plaintiff is for ejectment. There are three kinds of action in ejecting a person from the land. It is clear in the complaint that the plaintiff is intending to eject the defendant from the land under the kind of ejectment, forcible entry or detainer. But in the complaint for forcible entry and detainer, it must be alleged in the complaint prior possession of the land by the plaintiff. But in the complaint it is alleged that the defendant is in possession of the land and not the plaintiff, and therefore the complaint should be for recovery of the right to possess the land, and the action should be filed in the Court of First Instance and not in this Court. The three kinds of action are the following: (1) The summary action for forcible entry or detainer by denominated action interdictal, under the former law of procedure (Ley de Enjuiciamiento Civil) which seeks the recovery of only physical possession, and is brought within one year in the Justice of the Peace Court; (2) The accion publiciana which is intended for the recovery of the right to possess and is a plenary action in an ordinary civil proceeding, before the Court of First Instance and (3) Accion de reivindicacion, which seeks the recovery of ownership which of course included the Jus utendi and jus fruendi) also brought in the Court of First Instance. Of these three kinds of action should be brought under No. 2 which is accion publiciana intended to recovery of the right to possess possession from the defendant, because it is the defendant who is in possession of the premises. The Court in its opinion, held that the complaint must be filed with the Court of First Instance of Nueva Ecija, because it is for a recovery of possession which is under the law, belong to the jurisdiction of the Court of First Instance of Nueva Ecija.

WHEREFORE, judgment is hereby rendered, dismissing this case."

We have to grant the petition. The proper remedy is ejectment under Rule 70 of the Rules of Court and not accion publiciana. Sec. 1 of said Rule provides:

"SECTION 1. Who may institute proceedings, and when. - Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a landlord, 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, or the legal representatives or assigns of any such landlord, vendor, vendee, or other persons, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper inferior 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 damages and costs. The complaint must be verified."

It should be noted that the summary action provided above is one to obtain possession only, filed in a municipal court within one year after the unlawful deprivation or withholding of possession complained of has taken place. It should also be noted that the remedy provides for two distinct causes of action: (1) forcible entry in which the defendant's possession of the property is illegal ab initio, and (2) unlawful detainer wherein the defendant's possession was originally lawful but ceased to be so by the expiration of his right to possess.

The present case which is to obtain possession only is one for unlawful detainer because Sergia A. del Rosario, the vendor a retro, failed to repurchase the property and after the consolidation of title in favor of the vendee a retro had been confirmed, she refused to vacate the property upon demand and after her right to possess it had ceased to be lawful. That a demand to vacate was made on Sergia A. del Rosario on June 13, 1979, and the action to eject was filed on October 22, 1979, well within the one-year period, are borne by the record.

The mistake of the respondent judge is his belief that the cause of action is forcible entry wherein it is necessary

to alleged prior possession and forcible deprivation thereof. But as stated above, the cause of action in this case is for unlawful detainer and it is sufficient to allege, as was done, that the defendant was unlawfully withholding possession from the plaintiff. (See 3 Moran, Comments on the Rules of Court, 302 [1970].)

Where the cause of action is unlawful detainer, prior possession is not always a condition sine qua non. This is especially so where a vendee seeks to obtain possession of the thing sold to him from the vendor. But if prior possession be insisted upon, Pharma Industries, Inc. had it before the suit for unlawful detainer was filed. Art. 531 of the Civil Code provides: "Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right. (438a)" And according to Tolentino, "proper acts and formalities" refer "to juridical acts, or the acquisition of possession by sufficient title, inter vivos or mortis causa, onerous or lucrative. These are acts to which the law gives the force of acts of possession. Examples of these are donations, succession, whether testate or intestate, contracts, such as a sale with right of repurchase, judicial possession, execution of judgments, such as when a sheriff, pursuant to a decision or order of the court, places certain parties in possession of property, execution and registration of public instruments, and the inscription of possessory information titles." (II Civil Code of the Philippines, 246-247 [1972].)

Pharma Industries, Inc. acquired possession when Sergia A. del Rosario executed in its favor on November 12, 1977, the deed of sale with right to repurchase over the land in question and the vendee's title was confirmed upon failure of the vendor to repurchase the property. (Annexes A-1, A-2, and A-3, Petition.)

Private respondent states that subsequently on August 25, 1980, Civil Case No. 7326 was filed in the Court of First Instance of Nueva Ecija to declare the deed of sale with the right to repurchase executed by Sergia A. del Rosario in favor of Pharma Industries, Inc. as an equitable mortgage. Such a suit, however, is not a bar to the ejectment suit.

WHEREFORE, finding the petition to be meritorious, it is hereby granted and, as prayed for, the respondent judge is hereby ordered to take cognizance of Civil Case No. 8126 in his court and to resolve the petitioner's Motion for Judgment on the Pleadings. No special pronouncement as to costs.

SO ORDERED.

Fernandez and De Castro, JJ., concur.

Aquino, J., concurs.

Barredo, (Chairman), J., concurs in the judgment of ejectment on the ground that defendant's right to possession was lost to plaintiff upon the expiration of her right to repurchase. The remedy in such a case is, of course, Deshaucio. But he reserves his view as to the acquisition of possession by the plaintiff by virtue of the sale with pacto de retro.

CONCURRING OPINION

AQUINO, J.:

I concur. Respondent city judge was unaware of Republic Act No. 5967 which took effect on June 21, 1969 and which enlarged the jurisdiction of city courts.

Section 3(c) of that law provides that, in addition to the jurisdiction of city courts under section 88 of the Judiciary Law, they shall have concurrent jurisdiction with the Court of First Instance "in ejection cases where the question

of ownership is brought in issue in the pleadings. The issue of ownership shall therein be resolved in conjunction with the issue of possession."

If the city court can resolve the issue of ownership in an ejectment case, it can also resolve the issue as to the better right of possession.

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