

RHODORA DEL CASTILLO, PETITIONER, VS. HON. CANDIDO AGUINALDO, AND SPOUSES ALBERTO OUANO AND CHRISTINA RETUYA-OUANO, RESPONDENTS.

G.R. No. 57127. August 05, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a special civil action of certiorari, prohibition, mandamus and injunction with an urgent prayer for the issuance of a restraining order filed by the petitioner which seeks to annul the Order of respondent Court,[1] the dispositive portion of which reads:

"WHEREFORE, finding the application for the issuance ex-parte by this Honorable Court of the writ of preliminary mandatory injunction to be sufficient in form and substance and to be founded and meritorious, the same is hereby GRANTED. Accordingly, upon the filing by plaintiffs of a bond in the amount of Five Thousand (P5,000.00) Pesos to protect the defendants from whatever damages they may sustain under the circumstances heretofore described, the said bond to be approved by this Honorable Court, let the corresponding WRIT OF PRELIMINARY MANDATORY INJUNCTION issue forthwith ex-parte, commanding the defendants, their collective helpers, laborers, privies, and others who may come in aid of them to immediately vacate the commercial building subject-matter of the above-entitled case and to turn over the physical possession and control of said premises to the plaintiffs and for them not to return thereto until further orders from this Honorable Court, and ordering the sheriff concerned to see to the effective enforcement of the said writ.

SO ORDERED."[2]

The facts of the case are as follows:

Respondents are owners of a parcel of residential/commercial land consisting of One Hundred Ninety Two (192) square meters, described as a three (3) story, three (3) door building, strategically located along the national highway of Subangdaku, Mandaue City, which would easily earn a monthly rental of a few thousand pesos.

Tan Ching Hai and spouses Domingo and Ester Tan happen to be close friends of herein respondents, and were allowed to use the entire building on their pretense that they do not have a place to stay and upon agreement that the same shall be used for residential purposes only and would peacefully and willingly surrender the premises to the respondents in case of need by the latter. Respondents did not require any amount of rental for the use of the aforesaid building. However, the Tan spouses, out of their conscience paid a meager amount of Two Hundred Forty (P240.00) Pesos not as rental but as a token of gratitude.

Tan Ching Hai and spouses Tan have been using and in fact been doing business out of the building since January, 1970 until sometime in 1977 when respondents asked the former to vacate the aforesaid building. They now refuse to vacate said building. Moreover, the spouses violated their undertakings to herein respondents consisting of the fact that strangers, like herein petitioner Rhodora del Castillo, were made to stay in the premises

and portions of the building were converted to a factory, in gross violation of their previous commitment. Conferences were had to resolve in a peaceful manner the surrender of the premises. Petitioner del Castillo then agreed to voluntarily vacate the premises in question peacefully and without further demand on January 31, 1981. This, petitioner failed to do in spite of a grace period given to her which expired on February 28, 1981. There being no intention by the petitioner to vacate the premises, respondents were forced to file a civil case[3] for damages amounting to Sixty Thousand (P60,000.00) Pesos and for the recovery of possession of realty and or specific performance, with application for preliminary mandatory injunction.

On March 19, 1981, the trial Judge issued an Order[4] granting respondent's application for preliminary mandatory injunction, and herein petitioner was ordered to immediately vacate the premises in question.

On March 26, 1981 and within the reglementary period, petitioner instead of filing an answer, filed a "Motion to Dismiss" on the ground that the Court had no jurisdiction over the subject matter or nature of the action or suit, and that the complaint is not verified as required by law. The "Motion to Dismiss" however, did not contain a notice of the time and place of hearing.

Accordingly, the trial court issued on April 10, 1981 two (2) Orders[5] viz:

1. One, declaring herein petitioners in default; and
2. Another, denying herein petitioner's "Motion to Dismiss"

On April 18, 1981, petitioners filed their Motion to Set Aside Order of Default and Motion to Dismiss.[6]

Two days later, or on April 20, 1981, the trial court rendered its decision against herein petitioner. Hence, the filing of the instant petition raising as issues the following:

1. Whether the trial court has jurisdiction over the subject matter or nature of the action or suit which is a simple case of ejectment; and
2. Whether the trial court has committed a grave abuse of discretion when it caused to issue a writ of preliminary mandatory injunction and placed the plaintiffs in possession of the property.

Actually, the question before the Court is whether the case at bar is an ejectment case and therefore, within the jurisdiction of the city or municipal courts, or a case for recovery of possession, falling within the jurisdiction of the then Court of First Instance.

Settled is the rule that jurisdiction of the court and the nature of the action are determined by the averments in the complaint.[7]

The complaint alleges that demand to vacate the premises was made in 1977, which is not disputed by petitioner. Since the complaint filed by the respondents was in 1981, which is definitely more than one year from the termination of possession by the herein petitioner, the proper action to be filed is an accion publiciana or an action for recovery of possession.

Likewise, petitioner's motion to dismiss did not contain a notice of the time and place of hearing, and is therefore a useless piece of paper with no legal effect. Rule 15 of the Rules of Court provides:

"Sec. 4: Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, especially on matters which the court may dispose of on its own motion.

"Sec. 5: The notice shall be directed to the parties concerned, and shall state the time and place for the hearing

of the motion.

"Sec. 6: No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected.

Any motion that does not comply with the foregoing rules should not be accepted for filing and if filed, is not entitled to judicial cognizance and does not affect any reglementary period involved for the filing of the requisite pleading. Thus, where the motion is directed to the Clerk of Court, not to the parties and merely states that the same is submitted "for the resolution of the court upon receipt thereof" said motion is fatally defective.[8]

In the instant case, the notice of hearing in the petitioner's "Motion to Dismiss" was addressed to the Clerk of Court in this wise:

THE CLERK OF COURT

CFI, BRANCH IX

GREETINGS:

Please submit the foregoing motion for the kind consideration of the Honorable Court immediately upon your receipt hereof without need of presence of counsel and further arguments.[9]

Not having complied with the rules, the "Motion to Dismiss" filed by herein petitioner did not stay the running of the reglementary period to file an answer. Consequently, the Order of Default and the Judgment of Default by the trial court is in order and the averments in the Motion to Dismiss can be disregarded.

As to the issue of jurisdiction, the case of Spouses Medina and Bernal vs. Valdellon[10] is illuminating in pointing out the distinction between accion publiciana or recovery of possession and unlawful detainer.

"The nature of the action embodied in the complaint is one for recovery of possession brought before the Court of First Instance by the alleged owners of a piece of land against the defendants who were supposed to have unlawfully continued in possession since 1969 when they were supposed to return it to plaintiffs, plus damages. That the action is not for unlawful detainer contemplated in Rule 70 of the Rules of Court, which falls under the exclusive original jurisdiction of the city courts or municipal courts, is very apparent because an action of unlawful detainer is defined as 'withholding by a person from another for not more than one year, of the possession of a land or building to which the latter is entitled after the expiration or termination of the former's right to hold possession by virtue of a contract express or implied.' "

The court a quo committed no error in declaring petitioner in default. The demand by the herein respondents to vacate the premises was made as early as 1977. The complaint for recovery of possession was filed by the respondents in 1981 which is more than one year from the expiration and/or termination of possession. The instant case then, is an accion publiciana or for recovery of possession and not an ejectment case.

WHEREFORE, finding no grave abuse of discretion on the part of the trial judge, in issuing the Order appealed from, the petition is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla and Regalado, JJ., concur.

[1] Branch IX, Court of First Instance of Cebu, Cebu City.

[2] Rollo, pp. 38-42.

[3] Rollo, pp. 20-35.

[4] Rollo, pp. 38-42.

[5] Rollo, pp. 87 and 88.

[6] Rollo, p. 89.

[7] Ganadin vs. Ramos, et.al., G.R. No. L-23547, 99 SCRA 613, (1980).

[8] Manila Surety and Fidelity Co., Inc. vs. Bath Construction and Co., L-16636, 14 SCRA 435, (1965).

[9] Rollo, pp. 56-57.

[10] G.R. No. 38510, 63 SCRA 278, (1975).

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