

ANGEL P. PERAN, PETITIONER, VS. THE HONORABLE PRESIDING JUDGE, BRANCH II, COURT OF FIRST INSTANCE OF SORSOGON, 10TH JUDICIAL DISTRICT, RAMON ESPERA, AND ENCARNACION EVASCO, AS P...*G.R. No. 57259. October 13, 1983*

Ponente: MELENCIO-HERRERA, J.

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The decision of the then Court of First Instance of Sorsogon, Branch II, Gubat, Sorsogon, rendered in the exercise of its appellate jurisdiction, dismissing Civil Case No. 1277, entitled "Angel P. Peran vs. Encarnacion Evasco, et al.," for Forcible Entry and Illegal Detainer, is being assailed in this Petition for Review on Certiorari on a question of law. Said Decision reversed the judgment of the 2nd Municipal Circuit Court of Bulusan-Barcelona, Sorsogon, for Forcible Entry & Illegal Detainer.

The antecedent facts follow:

The property in question, an unregistered residential land, with an area of 1,225 square meters more or less, situated at Tagdon, Barcelona, Sorsogon, was originally owned by Jose Evasco. On December 29, 1950, Jose Evasco executed a 'Reparticion Ex-Trajudicial' whereby he partitioned his properties among his five heirs.[1] Subject property was one of those allotted to his son, Alejandro Evasco, who had it surveyed in 1956 (Exhibits "I" and "1-1"). and who had it declared in his name under Tax Declaration No. 1900. The other heirs received their own shares, one of them, the deceased Anacleto Evasco, one of whose children was listed as Encarnacion, possibly, the principal private respondent herein.

Alejandro Evasco sold his property to Jose E. Torella on December 31, 1972,[2] who declared it for taxation purposes under Tax Declaration No. 5157.[3] On July 10, 1977, Jose E. Torella, in turn, sold the land to Jose Enriquez Sabater,[4] and the latter also declared the property in his name under Tax Declaration No. 7127.[5] Petitioner Angel P. Peran acquired the land by purchase from Jose Enriquez Sabater on December 27, 1978,[6] and subsequently declared it, too, in his name under Tax Declaration No. 7310.[7] The sale was duly recorded in the Register of Deeds Office of the province of Sorsogon on January 3, 1979 in accordance with the provisions of Sec. 194 of the Revised Administrative Code as amended by Act No. 3344.

Sometime in January 1979, petitioner personally asked private respondents, Encarnacion Evasco and her common-law husband Ramon Espera, whose house is erected on a 440 square meter portion (44 sq. ms. according to petitioner) of the lot in question, to remove the same and vacate the premises. Respondents refused, and consequently, a confrontation between the parties was had before the Municipal Mayor of Barcelona and later before the Municipal Judge of Bulusan-Barcelona to settle the dispute, but to no avail.

On February 8, 1979, petitioner filed a complaint for Forcible Entry and Illegal Detainer against private respondents before the 2nd Municipal Circuit Court of Bulusan-Barcelona, seeking the ejectment of the latter

from the portion in question contending that respondents are mere squatters thereon; that they had prevented plaintiff from entering the property and deprived him of possession; and that they were tolerating persons in getting soil and bringing about a gradual erosion of the land to his extreme prejudice.

Private respondents answered denying the material allegations of the Complaint, and alleging that they are the lawful possessors for more than twenty (20) years of the said portion, which formerly belonged to Jose Evasco, grandfather of Encarnacion Evasco; and that petitioner has no right to eject them therefrom.

On September 1, 1979, the 2nd Municipal Circuit Court of Bulusan-Barcelona rendered its Decision ordering private respondents to vacate the lot in question, return its possession to petitioner, reimburse him attorney's fees of P300.00 and litigation expenses, and to pay the costs. Reconsideration of the said decision filed by private respondents was denied by said Court on November 12, 1979. Private respondents appealed to respondent Court of First Instance of Sorsogon, Branch II.

Respondent Court reversed the Municipal Circuit Court and dismissed the case on March 28, 1980, ruling that said Court had no jurisdiction over the case as the same was filed only on February 4, (8), 1979, which was well beyond the one-year-period of limitation, the cause of action having accrued from the sale of the property by Alejandro Evasco to Jose E. Torella on December 31, 1972; and that since the only issue in an illegal detainer case is physical possession, "whoever has prior possession, no matter in what character, is protected by law." Reconsideration of the said Decision sought by petitioner was denied by respondent Court.

Petitioner appealed said judgment directly to this Tribunal on a question of law, raising as the lone issue:

. . . "whether the respondent court was in error when for purposes of determining the jurisdiction of the 2nd Municipal Circuit Court of Bulusan-Barcelona, to try Civil Case No. 1227, for Illegal Detainer:

(a) it reckoned the counting of one-year period within which to file the action from the sale of property in question by Alejandro Evasco to Jose Torella on December 31, 1972 and not from the date of demand made by the petitioner upon the respondents; and

(b) by assuming that 'prior possession in whatever character is protected by law.'"

We rule for petitioner.

Private respondents admit that the land in question was originally owned by Jose Evasco. The tax declarations covering their house clearly state "house built on land owned by Jose Evasco under Tax No. 1599." [8] Since the land had been partitioned to Alejandro Evasco by his father, Jose Evasco, respondent Encarnacion can lay no claim to the property even as a grand-daughter of Jose Evasco. Respondents may have been in possession of the portion they occupy prior to petitioner but they have not proved their title thereto, nor their right to possess the same. As the 2nd Municipal Circuit Court of Bulusan-Barcelona found, no concrete evidence was introduced by respondents on this point. Moreover, it is noteworthy that the validity of the "Reparticion Ex-trajudicial" whereby said lot was adjudicated to Alejandro Evasco by his father Jose Evasco, predecessors-in-interest of petitioner, had never been challenged.

If at all, private respondents' possession of their portion of the property was by mere tolerance of petitioner's predecessors-in-interest, which, however, does not vest in them a right which they can assert against petitioner. Possession by tolerance is lawful, but this becomes illegal when, upon demand to vacate by the owner, the possessor refuses to comply with such demand. [9] A possessor by tolerance is necessarily bound by an implied promise to vacate upon demand, failing which a summary action for ejectment is the proper remedy against him. [10] It is not necessary that there be a formal agreement or contract of lease before an unlawful detainer suit may be filed against a possessor by tolerance. [11] Neither is prior physical possession of the property by

petitioner an indispensable requisite.[12] The ruling of respondent Court, therefore, that "since the only issue in forcible entry and illegal detainer action is the physical possession of real property - possession de facto and not possession de jure - whoever has prior possession, no matter in what character, is protected by law," is erroneous under the factual milieu herein.

A Forcible Entry and Unlawful Detainer action must be brought within one year from the unlawful deprivation or withholding of possession.[13] The one-year-period of limitation commences from the time of demand to vacate, and when several demands are made, the same is counted from the last letter of demand.[14] Demand may either be personal or in writing.[15] The demand to vacate having been made by petitioner in January 1979, and the ejectment suit having been instituted on February 8, 1979, the 2nd Municipal Circuit Court of Bulusan-Barcelona acted well within its jurisdiction in taking cognizance of the case.

WHEREFORE, the assailed Decision of respondent Court of First Instance of Sorsogon, Branch II, in Civil Case No. 1227, is SET ASIDE, and the Decision of the 2nd Municipal Circuit Court of Bulusan-Barcelona is hereby reinstated.

Costs against private respondents.

SO ORDERED.

Abad Santos,[*] Plana, Escolin[*] and Relova, JJ., concur.

[*] Acting Chairman, First Division

[1] Exhibit "G," pp. 20-22, Records of Civil Case No. 1277.

[2] Exhibit "F," p. 19, *ibid.*

[3] Exhibit "E," p. 18, *ibid.*

[4] Exhibit "D," pp. 16-17, *ibid.*

[5] Exhibit "C," p. 15, *ibid.*

[6] Exhibit "B," pp. 13-14, *ibid.*

[7] Exhibit "A," p. 12, *ibid.*

[8] "Exhibits "H," "1," "2" and "3," pp. 23, 35, 36 & 37, *ibid.*

[9] *Pangilinan vs. Aguilar*, 43 SCRA 136 (1972).

[10] *Yu vs. De Lara*, 6 SCRA 785 (1962).

[11] *Pangilinan vs. Aguilar*, *supra*.

[12] *Pangilinan vs. Aguilar*, *supra*; *Pharma Industries, Inc. vs. Pajarillaga*, 100 SCRA 339 (1980).

[13] Sec. 1, Rule 70, Rules of Court.

[14] *Racaza vs. Susana Really Inc.*, 18 SCRA 1172 (1966); *Calubayan vs. Pascual*, 21 SCRA 146 (1967); *Sy Oh vs. Garcia*, 28 SCRA 735 (1969); *DBP vs. Canonoy*, 35 SCRA 197 (1970).

[15] Sec. 2, Rule 70, Rules of Court.

[*] Associate Justices Vicente Abad Santos and Venicio Escolin were designated to sit in the First Division vice Associate Justices Claudio Teehankee, Chairman, and Hugo E. Gutierrez, Jr. who are on official leave, pursuant to Special Order No. 251, dated September 23, 1983.

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