

**EUSEBIO BERNABE AND TERESITA P. BERNABE, PETITIONERS, VS.
HON. ARTEMON D. LUNA, PRESIDING JUDGE, BRANCH XXXII, COURT
OF FIRST INSTANCE OF MANILA AND JESUS GACUYA,
RESPONDENTS.**

G.R. No. 57645. February 27, 1987

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a Petition for Certiorari assailing the order of the respondent Court dismissing the complaint of the petitioners for "Recovery of Possession" on the ground that this is an ejectment case within the exclusive jurisdiction of the City Court of Manila.

In their complaint, plaintiffs (petitioners herein) allege that they are the owners of a parcel of land with an area of 199.4 square meters more or less, located in Tondo, Manila; that defendant (private respondent herein) constructed a house on said lot without plaintiffs' permission; that on November 14, 1980, plaintiffs thru counsel made a written demand for the removal of said house as well as for the recovery of damages for the reasonable use and occupation thereof; and that defendant refused and failed to comply despite repeated demands.

Upon defendant's motion for dismissal, respondent court issued the following ruling:

"It is clear on the face of the complaint that at the time of the filing of this case on February 19, 1981, the defendant was in possession, as tenant, of the premises. When plaintiffs' counsel, therefore, sent a written notice on November 4, 1980 requiring defendant to vacate the premises when this action was brought, the one (1) year period after the unlawful deprivation or withholding of possession has not yet set in. It is clear that this is an ejectment case within the exclusive jurisdiction of the City Court of Manila.

"ACCORDINGLY, the complaint is hereby dismissed.

"SO ORDERED."

Plaintiffs moved for a reconsideration contending that there has never been any lessor-lessee relationship between plaintiffs and defendant, that while defendant "has been a lessee of the premises of the owner, Fejosera Investment, Inc. but when the subject lot was sold to plaintiff Eusebio Bernabe on December 7, 1973, the lessor-lessee relationship between them has automatically been extinguished; and therefore from December 7, 1973, the occupancy of the defendant of the lot by his house standing thereon had become illegal, and that plaintiffs' present action is for accion publiciana, because the withholding of the lot in question by the defendant had been without their permission and consent."

Respondent court denied said motion for reconsideration, hence the present petition on the following grounds:

I. The respondent court has decided a question of substance, not theretofore determined by the Supreme Court, with respect to the issue of lessor-lessee relationship.

II. The respondent court has decided this case in a way probably not in accord with law.

Petitioners raise the issue of lessor-lessee relationship to determine whether the Court of First Instance (now known as the Regional Trial Court) or the City Court of Manila (now known as the Metropolitan Trial Court) has exclusive jurisdiction over this case. If there had been such a relationship, still the issue boils down as to how long the private respondent had been unlawfully withholding from petitioners the possession of the lot in question.

Respondent Court ruled that the unlawful withholding should commence from the time the demand letter of November 14, 1980 was received by private respondent and not from the time the petitioners bought the lot on December 7, 1973, and that when the action was brought on February 19, 1981, the one-year period had not yet lapsed, therefore the City Court of Manila had exclusive jurisdiction.

Petitioners argue that the unlawful withholding was for seven years or for more than one year because when the property was sold the lease contract between the former owners, Fejosera Investment Incorporated and defendant was automatically extinguished, as the right of the seller to lease the property has ceased to exist. Petitioners maintain that it is their prerogative as the new owners whether or not to lease the property to the private respondent. Their inaction cannot be considered as their tacit approval or consent for the private respondent to prolong his stay in the premises and even if it can be so considered the non-payment of rentals has been for more than a year.

We have noted that while petitioners allege in their complaint that they are the owners of the lot on which the house of the private respondent is constructed, their attached TCT shows that the lot is still in the name of Fejosera Investment Incorporated. Private respondent and said company entered into a contract of lease in 1950 for the use and occupation of said lot. Petitioners allegedly bought the lot in question in 1973, and they must have been fully aware of the occupancy of the private respondent of the premises in question. Yet, they did not take any action to remove the house of the private respondent or to inform the respondent that they had become the new owners of the lot in question. It is clear therefore that the lease was allowed to continue.

Parenthetically, petitioners are in error when they say that because they are the buyers of the lot involved herein, they ipso facto have the right to terminate an existing lease. They can do so but only if the lease itself is not recorded, and they, as buyers, are not aware of the lease's existence and duration, thus Art. 1676 of the Civil Code says:

"The purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may terminate the lease, save when there is a stipulation to the contrary in the contract of sale, or when the purchaser knows of the existence of the lease.

"If the buyer makes use of this right, the lessee may demand that he be allowed to gather the fruits of the harvest which corresponds to the current agricultural year and that the vendor indemnify him for damages suffered.

"If the sale is fictitious, for the purpose of extinguishing the lease, the supposed vendee cannot make use of the right granted in the first paragraph of this article. The sale is presumed to be fictitious if at the time the supposed vendee demands the termination of the lease, the sale is not recorded in the Registry of Property. (1571a)"

In the present case, the lease is not recorded, and although petitioner knew of its existence, there was no fixed period for its duration — hence the lease was generally terminable at the will of the buyers - petitioners. But of course they had to make a demand for its termination. This demand, they actually made.[1]

Consequently, the possession of private respondent over the lot in question became illegal only on November 14,

1980, when the formal demand to pay and vacate the premises was sent to him. The case is clearly one of illegal detainer which must be filed within one year from the date of the last demand. When the complaint against private respondent was filed on February 19, 1981, the one year period had not yet lapsed. Such being the case the court a quo did not acquire jurisdiction over the case and the proper action should have been one of Unlawful Detainer which necessarily falls within the original and exclusive jurisdiction of the City Court.

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Fernan, (Chairman), Alampay, Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

[1] Subject to Art. 1687 of the Civil Code with respect to yearly, monthly or weekly payment of merits.

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