

**EUSEBIO BERNABE AND TERESITA P. BERNABE, PETITIONERS, VS.
JUDGE ABELARDO M. DAYRIT, ACTING FOR BRANCH II, COURT OF
FIRST INSTANCE OF MANILA, AND MELCHOR TAMAYO,
RESPONDENTS.**

G.R. No. 58399. October 27, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

For determination in this case is the propriety of the lower court's dismissal of the action of the Bernabe spouses on the ground that it is an ejectment suit filed within one year from the date of last de-mand and, hence, it falls within the exclusive original jurisdiction of the city court.

The Bernabe spouses, in their verified complaint dated February 16, 1981 in the Court of First Instance of Manila, prayed that Melchor Tamayo should vacate their lot in Tondo, Manila, covered by Torrens title in their names, remove his illegally constructed house thereon and pay as reasonable compensation for the use of the lot P6,375 from January 1, 1974 to January 31, 1981 and P75 a month from February, 1981. A demand for that purpose was made by the said spouses in their counsel's letter of November 8, 1980.

Tamayo in his answer alleged that he had been staying on the lot since 1951 when he leased it from Fejosera Investment, Inc. at fifteen pesos a month. He constructed his house with the lessor's consent. He pleaded that the court had no jurisdiction over the case.

After filing his answer, Tamayo moved to dismiss the case on the ground that it is either an unlawful detainer or forcible entry case and as it was filed within one year from the date of the demand to vacate, the city court has jurisdiction over it.

The trial court granted the motion and dismissed the action on the ground that it was not an accion publiciana but a case where the unlawful deprivation is to be reckoned from the date of the last demand and, as the action was brought within one year from that demand, it falls within the jurisdiction of the city court. Cited were the rulings in *Calubayan vs. Pascual*, 128 Phil. 160, *Sy Oh vs. Garcia*, L-29328 and L-29589, June 30, 1969, 28 SCRA 735 and *Development Bank of the Philippines vs. Canonoy*, L-29422, September 30, 1970, 35 SCRA 197.

We hold that the trial court erred in dismissing the action. Its purpose is to establish that the Bernabes have a better right than Tamayo to possess the land notwithstanding that he had occupied it since 1951 under an alleged lease contract with Fejosera Investment, Inc., from which the Bernabes bought the land in 1973.

The instant case is not a forcible entry case. Tamayo misrepresented in his motion to dismiss that the Bernabes alleged in paragraph 3 of their complaint that he "forcibly took possession of the land". There is no such allegation in the complaint.

It is neither a case of unlawful detainer because Tamayo claims that he is occupying the lot as the lessee of the

Bernabes' predecessor-in-interest. Necessarily, the court would have to resolve whether such lease is binding on the Bernabe vendees.

"Accion publiciana corresponde al que tiene derecho a la posesion, contra el que posee sin derecho o con titulo menos firme, para que se ponga la cosa en poder del actor con todas las accesiones, frutos, etc." It is a plenary action to determine the better right of possession. (1 Enciclopedia Juridica Española, p. 450. Bishop of Cebu vs. Mangaron, 6 Phil. 286, 291; Aguilon vs. Bohol, L-27169, October 20, 1977, 79 SCRA 482.)

Accion publiciana or plenaria de posesion is also used to refer to an ejectment suit which is filed after the expiration of one year from the accrual of the cause of action or from the date the lessee began to withhold unlawfully the possession of the realty. In such a case, the Court of First Instance, now Regional Trial Court (not the inferior court), would have jurisdiction. (Ledesma vs. Marcos, 9 Phil. 618; Barredo vs. Santiago, 102 Phil. 127; Firmeza vs. David, 92 Phil. 733; J. M. Tuason & Co. vs. Villanueva and Fajardo, 104 Phil. 643; Sarona vs. Villegas, L-22894, March 27, 1968, 22 SCRA 1257; Medina vs. Valdellon, L-38510, March 25, 1975, 63 SCRA 278.)

In the Calubayan case, cited by the trial court, the purpose of the plaintiffs-owners in making the demand was not really to eject the defendant but to facilitate arrangements for the continuity of defendant squatter's possession of the land. The plaintiffs wanted to be recognized as the new owners of the land.

The Sy Oh and the Canonoy cases involve several demands to vacate made by the lessor. It was correctly ruled that the one-year period should be computed from the last demand. Those cases are distinguishable from the instant case.

From the practical standpoint, since the instant action for recovery of possession was filed on February 19, 1981, it would not be expedient to ask the Bernabes to refile it now in the city court which would be called upon to decide the questions as to the effect of the sale on the alleged lease and on the house constructed by Tamayo and his liability for the use and occupation of the lot since January 1, 1974. Such questions could be more competently resolved by the Regional Trial Court.

WHEREFORE, the lower court's order of dismissal is reversed and set aside and it is directed to proceed with the case. No costs.

SO ORDERED.

Makasiar, (Chairman), Guerrero, Abad Santos, and Escolin, JJ., concur.
Concepcion, Jr. and De Castro, JJ., on leave.

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