

**JUAN GUMIRAN, EUSEBIO GUMIRAN, AND SALVADOR GUMIRAN,
PLAINTIFFS AND APPELLANTS, VS. PIO GUMIRAN, DEFENDANT AND
APPELLEE.**

G.R. No. 6364. January 11, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 18th of February, 1909, the plaintiffs commenced an action in the Court of First Instance of the Province of Isabela, relating to the possession of a certain parcel of land, described in paragraph 2 of said complaint. The plaintiffs alleged that they were the absolute owners and entitled to the possession of said land; that upon the 6th day of May, 1908, they were in possession of said land and had been from time immemorial, and that, without any right or title, the defendant deprived them of the possession of the same, that the defendant was still in possession of said land and that the plaintiffs, by reason of such wrongful dispossession, had suffered damages in the sum of P500. The prayer of the petition of the plaintiffs was as follows:

"Therefore, the plaintiffs through their counsel pray the court to render judgment:

"(1) Sentencing the defendant to restore the property described in paragraph 3 of this complaint;

"(2) Declaring that the plaintiffs are entitled to possession and ownership of the said property and imposing perpetual silence upon the defendant with reference to his claims of ownership of said property;

"(3) To payment of P500 damages;

"(4) To pay the costs of this case; and

"(5) Any other relief and compensation that the court may consider just and equitable."

To the foregoing complaint the defendant presented a demurrer, based upon the ground that the Court of First Instance did not have jurisdiction of said cause—that the action was one over which the courts of justices of the peace had exclusive jurisdiction.

After hearing the evidence adduced during the trial of the cause, the Honorable Richard Campbell, judge, rendered the following decision:

"On March 20, 1909, the defendant filed in this case a demurrer to the complaint on the ground that the allegations of the plaintiff, as set forth in said complaint, brought this matter within the purview of the provisions of section 80 of the Code of Civil Procedure; and that therefore the action is for illegal detainer; that this court accordingly lacks jurisdiction to try this case, for the reason that the facts set forth in the complaint demonstrate that the detainer alleged by the plaintiff occurred within a year from the date when the cause of action arose, and that therefore it should have been instituted in the justice of the peace court.

"The case was called for trial on January 12, 1910, the attorneys Messrs. MacDougall and Concepcion appearing for the plaintiff and Messrs. Hawkins and Harvey for the defendant.

"After hearing the arguments of counsel for both parties and having carefully considered the law applicable to the questions raised by the defendant in his demurrer, as well as the legal precedents cited by both parties, the court is of the opinion that the demurrer should be sustained.

"The allegation of the plaintiff's counsel that this is an action for recovery, and not an action for forcible entry, seems to be based solely on the fact that in drawing up the complaint the phraseology of section 80 of the Code of Civil Procedure was not used; but this court believes that the complaint very clearly brings this matter under the provisions of section 80, and, according to the decision of the Supreme Court in the case of *Ledesma vs. Marcos* (9 Phil. Rep., 618), which is one of the precedents cited by the plaintiff's counsel in support of his contention, an action for recovery based on any of the provisions of section 80 of the Code of Civil Procedure can not be instituted in the Court of First Instance within one year from the time when the cause of action arose. Even though it is possible to conceive that an action for recovery may be outside the provisions of section 80 of the Code of Civil Procedure, if such is the case, the plaintiff should have adduced in his complaint facts sufficient to demonstrate thereby that this action is outside the legal provisions governing an action for illegal detainer.

"Since the plaintiff preferred to exercise together in a single complaint of action for recovery the action for possession and the action for recovering title, he should have waited for the period of one year to elapse from the date when the cause of action arose before filing his complaint in this court, because the Court of First Instance has no jurisdiction over an action for recovery until after the expiration of the time prescribed by section 80 of the Code of Civil Procedure. (*Archbishop of Manila vs. Municipality of Rosario*, 14 Phil. Rep., 176; *Bishop of Cebu vs. Mangaron*, 6 Phil. Rep., 286; *Ledesma vs. Marcos*, 9 Phil. Rep., 618.)

"Therefore, the court sustains the demurrer and declares this cause dismissed."

From that decision the plaintiffs appealed and made the following assignments of error:

"I. The court erred in declaring that the complaint filed in this case constitutes a summary action for possession included within the provisions of section 80 of the Code of Civil Procedure in force in the Philippine Islands, Act No. 190, wherefore the Court of First Instance lacks original jurisdiction over the matter in litigation.

"II. The court erred in declaring that the action for recovery as well as the action for restitution of possession of a parcel of real estate can not be instituted in the Court of First Instance within one year from the time when the cause of action arose.

"III. The court erred in sustaining the defendant's demurrer and in dismissing the plaintiffs' complaint."

By reference to the complaint, it will be noted that the present action was commenced on the 18th of February, 1909, and that the alleged dispossession of the plaintiffs took place on the 6th of May, 1908. The action, therefore, was commenced within one year from the time of the alleged dispossession. We are of the opinion that the only question presented in this appeal is whether or not the present action can be maintained in the Court of First Instance, in view of the provisions of section 80 of the Code of Procedure in Civil Actions, as amended by Act No. 1778. Said section 80 provides for a special remedy for the purpose of recovering the possession of land under special facts and gives justices of the peace original jurisdiction in such cases. The facts upon which said action (forcible entry and detainer) can be brought, are specially mentioned in said section. They are: "That the person has been deprived of the possession of his lands by force, intimidation, threat, strategy, or stealth," etc. Of course we do not mean to decide that the complaint must allege, in the language of the statute, that the person has been deprived of his possession by force, intimidation, threat, strategy, or stealth. The plaintiff in an action of *desahucio* must set up in his complaint facts which show that the dispossession took place by reason of force, intimidation, etc.

In the present case the allegation in the complaint is simply that the plaintiff has been "deprived" of the land of

which he is and has been the legal owner for a long period. This allegation is not sufficient to show that the action is based upon the provisions of said section 80. Moreover, upon an examination of the prayer of the complaint, it is seen that the plaintiff is not only seeking to be repossessed of the land but desires also a declaration that he is the owner of the same. It is quite clear, from an examination of the complaint, that, had the same been presented in the court of the justice of the peace, it would have been demurrable, for the reason that the facts alleged fact to show that the plaintiff had been dispossessed by any of the methods mentioned in said section 80.

It is a general rule of pleading and practice that in ah pleadings filed in courts of special jurisdiction, the special facts giving the court jurisdiction must be specially alleged and set out. Unless these special jurisdictional facts are alleged, the complaint is demurrable. The complaint in the present case not containing allegations showing the special jurisdiction of the justice of the peace, the same would have been demurrable had it been filed in the court of a justice of the peace.

Said section 80 does not cover all of the cases of dispossession of lands. Whenever the owner is dispossessed by any other means than those mentioned in said section, he may maintain his action in a Court of First Instance, and it is not necessary for him to wait until the expiration of twelve months before commencing an action to be repossessed and to be declared to be the owner of said land. The summary action before a justice of the peace is given only for the special circumstances mentioned in said section (80). In all other cases Courts of First Instance have jurisdiction, even though the twelve months have not elapsed. (Alonso vs. Municipality of Placer, 5 Phil. Rep., 71; Roman Catholic Church vs. Familiar, 11 Phil. Rep., 310; Gutierrez vs. Rosario, 15 Phil. Rep., 116.)

Prior to the existence of Act No. 2041, justices of the. peace could not try questions of title to land. In an action of forcible entry, and detainer, therefore, the question of ownership can not be tried. (Bishop of Cebu vs. Mangaron, 6 Phil. Rep., 286; Barlin vs. Ramirez, 7 Phil. Rep., 41; Evangelista vs. Tabayuyong, 7 Phil. Rep., 607; Ty Laco Cioco vs. Muro et al. 9 Phil. Rep., 100.)

It is not believed that it was the intention of the Legislature in giving justices of the peace original, exclusive jurisdiction in the cases mentioned in said section 80, to thereby deprive the Courts of First Instance of original jurisdiction in other cases of dispossession, where the plaintiff desired to have the question of his title determined at the same time, even though the action should be commenced in the Court of First Instance within the year. For all of the foregoing reasons, we are of the opinion and so decide that, under the facts alleged in the complaint in the present case, the Court of First Instance had jurisdiction and therefore the demurrer presented by the defendant should have been overruled.

The judgment of the lower court, sustaining the demurrer, is hereby reversed, and the case is hereby remanded to the lower court, with direction that the defendant be permitted to file his answer within the time specified by law; and without any finding as to costs, it is so ordered.

Torres, Mapa, and Moreland, JJ., concur.

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