

RICARDO MEDINA, SR., PETITIONER, VS. THE HONORABLE COURT OF APPEALS (FOURTH DIVISION) AND HEIRS OF LEANDRO IGAMA REPRESENTED BY DRA. IMELDA IGAMA BELMONTE, RESPONDENTS.*G.R. No. 76707. February 06, 1990*

Ponente: PARAS, J.

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This is a petition for review on certiorari of the September 12, 1986 resolution of the Court of Appeals[*] in CA-G.R. SP No. 09353 dismissing herein petitioner's petition for review; and the December 2, 1986 resolution of the same court denying the motion for reconsideration.

Herein private respondents are the heirs (widow and children) of the late Leandro A. Igama, registered owner of a 264.28 square meters residential land situated at Alladin St., Pandacan, Manila. Sometime in the mid 1950's, this said land was entrusted by Leandro to his brother-in-law, Engr. Teofilo M. Mendoza. Mendoza was allowed to construct a house therein with the condition that the constructed house will either be removed or relinquished anytime when the property will be needed by the owner. Mendoza constructed a duplex type house, occupied one half of it and since September, 1957, had had the other half rented by herein petitioner. Sometime in 1976, Engr. Mendoza was requested to turn over the property including the improvements thereon. However, Engr. Mendoza merely vacated the one-half portion he was then occupying, encouraged petitioner to continue occupying the other half, and continued to receive the monthly rentals. On December 27, 1984, Engr. Mendoza, after receiving the sum of P10,000.00 as full and complete consideration of the duplex house, finally turned over the same. Thereafter, private respondents directly advised petitioner to vacate the premises since an immediate member of their family, Dr. Alfredo M. Igama (married with five children, working in Makati and renting an apartment in Fairview Subdivision), urgently needed the house. When petitioner refused to vacate the house despite repeated demands, on January 31, 1985, private respondents brought the matter to their Barangay. No amicable settlement having been reached, a complaint for unlawful detainer dated May 16, 1985 was filed with the Metropolitan Trial Court of Manila, Branch XXVII, presided over by Hon. Alicia G. Decano, docketed as Civil Case No. 109750 (Rollo, pp. 18-20), to which, petitioner filed his answer on June 1, 1985 (Ibid., pp. 26-30).

After the parties had filed their respective position papers and affidavits, the trial court, in a decision dated September 19, 1985 (Ibid., pp. 40-45), ruled in favor of private respondents —

"WHEREFORE, judgment is hereby rendered ordering the defendant and all persons claiming title under him to vacate the premises and surrender the same to the plaintiffs; to pay attorney's fees in the amount of P1,000.00 and to pay the costs of this suit."

Petitioner filed an appeal with the Regional Trial Court of Manila, Branch LI, presided by Hon. Cesar S. Paguio, docketed therein as Civil Case No. 85-33343, but in a decision dated May 7, 1986 (Ibid., pp. 54-55), the appealed decision was affirmed en toto —

"In addition to the above judicial enunciation, the Decision of the lower Court appealed from, is hereby

affirmed en toto."

Petitioner, on June 3, 1986, filed a Motion for Reconsideration (Ibid., pp. 56-60); and on June 10, 1986, a Motion for Ocular Inspection (Ibid., pp. 61-62), but in an order dated June 20, 1986 (Ibid., p. 67), both motions were denied —

"The motion for reconsideration filed by the defendant-appellant is hereby denied for lack of merit.

"Likewise, the motion for ocular inspection is hereby denied, the same having become moot and academic with the denial of the motion for reconsideration."

Not satisfied, petitioner filed with respondent Court of Appeals a Petition for Review, docketed therein as CA-G.R. SP No. 09353 (Ibid., pp. 69-79). The Court of Appeals, however, in a resolution promulgated on September 12, 1986 (Ibid., pp. 80-81), denied the petition on the ground that the same was filed out of time —

"WHEREFORE, for having been filed out of time the petition for review under consideration is hereby denied due course. No pronouncement as to costs."

Petitioner filed a Motion for Reconsideration (Ibid., pp. 82-84), but the same was denied in a resolution promulgated on December 2, 1986 (Ibid., p. 87). Hence, the instant petition.

Petitioner raised four (4) issues, to wit:

I

WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION TO ENTERTAIN THESE UNLAWFUL DETAINER PROCEEDINGS?

II

IN THE EVENT THAT THE HONORABLE COURT DOES HAVE JURISDICTION TO ENTERTAIN THE CASE, IS THE DEFENDANT (YOUR PETITIONER) ENTITLED TO AN EXTENSION OF AT LEAST ONE (1) YEAR CONSIDERING HIS ALMOST TWENTY EIGHT YEARS OF OCCUPANCY WITH NO RENTALS IN ARREARS?

III

WHETHER OR NOT THE PUBLIC RESPONDENT HAS COMMITTED GRAVE ABUSE OF ITS DISCRETION WHEN IT DISMISSED THE PETITION FOR REVIEW FILED BY THE PETITIONER ON THE GROUND THAT IT IS FILED OUT OF TIME?

IV

WAS THE ADJACENT DOOR OF THE DUPLEX PREMISES OF THE PRIVATE RESPONDENTS (PLAINTIFFS IN THE INFERIOR COURT) BEEN VACATED FOR THE LAST SEVEN MONTHS DURING THE PENDENCY OF THE APPEAL OR NOT?

The instant petition is devoid of merit.

The procedural aspect of this case is the issue of the timeliness of the petition for review. Petitioner claimed that on the last day of his extended period to file his petition, July 14, 1986, he posted with the Central Post Office of Manila his petition, under Registry Receipt No. 1608, which was received by respondent Court of Appeals, through its authorized representative Dever Catindig, on July 17, 1986. In support thereof, he submitted Registry Receipt No. 1608 and a certification of Postmaster Wilfredo R. Ulibarri (Rollo, p. 68).

He therefore, avers that as held in the case of *NAWASA v. Secretary of Public Works and Communications*, 16 SCRA 536 [1966], that the date of mailing by registered mail is considered the date of filing of any petition or pleading, therefore he filed his petition on time.

The contrary is, however, shown by the record which reveals that petitioner filed his petition for review with the Court of Appeals not by mail but by personal service on July 15, 1986 at 3:25 p.m. as stamped on the front page of the petition (Annex "3", Rollo, p. 101). As against the certification of the postmaster which is not conclusive to prove that the registered letter alluded to is the subject petition for review, coupled with the lack of registry return card that would have shown the receipt thereof by the authorized representative of the Court of Appeals, the evidence of receipt by personal delivery is more persuasive as it tallies with the records of said court.

Hence, the Court of Appeals did not err when it ruled that it is bereft of jurisdiction to pass upon the assailed decision of the trial court which has become final and executory as of July 14, 1986 (Rollo, p. 99).

This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional and failure to perfect an appeal as required by the rules has the effect of rendering judgment final and executory (*Quiqui v. Boncaros*, 151 SCRA 417 [1987]).

And even granting that the liberal trend of the rulings of this Court on matters pertaining to timeliness of the perfection of an appeal, may be invoked in this case, with the end in view of affording the party-litigant amplest opportunity to present his case for the proper and just determination of his cause, freed from the constraints of technicalities (*Rama v. Court of Appeals*, 148 SCRA 498 [1987]), unfortunately the result would still be the same — the petition will still be dismissed, as devoid of merit.

Petitioner then contends that his occupation of the premises being only by tolerance and that no oral or written contract exist, the proper remedy is *accion publiciana* which is within the jurisdiction of the Regional Trial Court and not ejectment proceedings which is within the jurisdiction of the Metropolitan Trial Courts.

Petitioner's contention is untenable.

Precisely, because there is no lease contract which exists between petitioner and private respondents, undeniably, the former's right to occupy the property is derived from the right of Engr. Mendoza which has already been terminated. Consequently, when Engr. Mendoza finally turned over the duplex house to private respondents on December 27, 1984, and formal demand to petitioner to vacate the premises was made, petitioner's possession of the property has become unlawful.

But as stated on January 31, 1985, petitioner refused to vacate the premises and no amicable settlement was reached between petitioner and private respondents in the Barangay level. Hence, private respondents filed the instant case of unlawful detainer on May 16, 1985, or within one (1) year from the cause of action.

Petitioner would have this Court consider, the instant case as an *accion publiciana*, cognizable by the Regional Trial Court and not by the Metropolitan Trial Court.

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." (*Spouses Medina and Bernal v. Valdellon*, 63 SCRA 282 [1975]).

However, should the action be filed more than one year after such deprivation or unlawful withholding of possession, even if the plaintiff decides to raise the question of illegal possession only, the case is *accion publiciana* or a recovery of the right to possess and is a plenary action in an ordinary proceeding in the Court of

First Instance (Banayos v. Susana Realty Inc., 71 SCRA 558 [1976]; Bernabe v. Dayrit, 125 SCRA 423, 425 [1983]).

In the case at bar, the ejectment suit having been filed within the one (1) year period, the proper action is one of Unlawful Detainer which necessarily falls within the original and exclusive jurisdiction of the lower court (Bernabe v. Luna, 148 SCRA 114 [1987]), or the Metropolitan Trial Court.

In the same manner, petitioner's contention that he is entitled to an extension of at least one (1) year considering his almost twenty eight (28) years of occupancy with no rentals in arrears is not well taken. Stress must be made, that private respondents as owners of the duplex house are not privy to whatever agreement petitioner has made with Engr. Mendoza and are not bound by the same. In fact, petitioner himself alleged that he is occupying the premises only by tolerance of the owner. There being no lease contract between them, they are not covered by the rental laws, much less can private respondents be compelled to give one year extension of a lease contract, they never executed in the first place.

For the same reason, neither is it material to the case at bar whether or not the adjacent door of the duplex premises has been vacated for the last seven months.

Ultimately, the important point to consider is that Engr. Mendoza is duty bound to vacate the premises as stipulated by the contracting parties, and so are all persons claiming under him.

PREMISES CONSIDERED, the instant petition is hereby DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Fourth Division; Penned by Associate Justice Fidel P. Purisima and concurred in by Associate Justices Rodolfo A. Nocon and Pedro A. Ramirez.

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