

MARCIANA CONSIGNADO AND NAZARIO ASENDIDO, PETITIONERS, VS. HONORABLE COURT OF APPEALS, (NINTH DIVISION), MILAGROS MATINING AND HERACLEO MATINING, RESPONDENTS.

G.R. No. 87148. March 18, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review on certiorari of the decision* of the Court of Appeals (Ninth Division) in CA-G.R. SP NO. 14729, dated 15 February 1989.

The antecedents are as follows:

On 8 August 1985, the petitioners-spouses Marciana Consignado and Nazario Asendido filed with the Municipal Trial Court of Nagcarlan, Laguna a complaint¹ against the private respondent Milagros Matining, assisted by her husband Heracleo Matining, docketed therein as Civil Case No. 608, alleging among others as follows:

“3. Plaintiff Marciana Consignado is the absolute owner of a parcel of residential land, together with a house existing thereon, as her paraphernal property located at 46 Avenida Rizal (Poblacion), Nagcarlan, Laguna, more particularly described as follows:

'A parcel of land located in Avenida Rizal, Nagcarlan, Laguna. Bounded on the North by property of Rosita Urreta; on the East by Avenida Rizal; on the South by property of the Heirs of Santos Doria and on the West by a Canal and Property of Mateo Suelto, containing an area of Fifty Eight (58) square meters, more or less;'

“4. Her (Marciana) ownership thereto is evidenced by Tax Declaration No. 25209 declared in her name, with an assessed value of P1,220.00, as well as by other documents, including document dated December 31, 1949 and for which she (Marciana) had been paying realty taxes up to the current year;

“5. Said property originated from her (Marciana) grandfather Bernabe Consignado, having been previously declared in his name under Tax Declaration No. 48 for the year 1938;

“6. In turn, she (Marciana) inherited the same property from her father Florentino Consig-nado, as per Document of Adjudication of Share in her favor and which was duly registered under Act 3344 by the Register of Deeds of Laguna on May 13, 1981;

“7. Sometime in 1974, when defendant pleaded that she became homeless after her house was burned, said defendant was allowed by herein plaintiffs out of Christian charity to occupy a portion of the property as long as they (plain-tiffs) do not need the same;

“8. However, without the consent or know-ledge of plaintiffs, defendant removed the kitchen and the dining room, which caused damage to the plaintiffs in the sum of P5,000.00;

“9. Hence, from August 31, 1983, written demands to vacate the same were made to defendant by herein plaintiffs, through her (Marciana) sister Estebana Consignado, in order for them (plaintiffs) to repossess it as

they need it for their own use, the last of which was a written demand dated April 14, 1985, received on April 22 1985;

"10. Notwithstanding repeated demands, defendant refused and still refuses to vacate said property thereby unlawfully withholding possession thereof up to this date;

x x x

On their second cause of action, the petitioners (as plaintiffs) further alleged:

"13. Due to the deliberate refusal of defendant to vacate said property despite the first oral demand made in 1980, plaintiffs who are being deprived of possession of the same suffered actual damages at the rate of P50.00 monthly, which is the reasonable amount for the use and occupation thereof amounting to a total sum of P2,300.00 up to July 31, 1985;

"14. By reason of the filing of the present action, plaintiffs have incurred and will incur expenses of litigation in the sum of P1,000.00;

"15. Plaintiffs likewise engaged the services of counsel in handling this case in Court and for whom she (defendant) is obliged to pay for attorney's fee in the sum of P300.00 for every court appearance therein;"

The petitioners prayed in their complaint that --

"x x x, judgment be rendered at (sic) the defendant by ordering her, as follows:

"a. to vacate the property in question, including her agents and representatives found therein;

"b. to pay to the plaintiffs actual damages in the sum of P2,300.00, as reasonable amount for the use and occupation of said property from August 31, 1983, date of the first written demand up to July 31, 1985, at the rate of P50.00 monthly;

"c. to pay to the plaintiffs the sum of P5,000.00; representing the value of the damage as caused by defendant's removal and/or destruction of the kitchen and dining room;

"d. to pay to the plaintiffs the sum of P1,000.00 as expenses of litigation;

"e. to pay to the plaintiffs the sum of P300.00 as reasonable attorney's fee for every court appearance until terminated, and

"f. with costs against the defendant"

Thereafter, as ordered by the court a quo, the private respondents filed their answer,³ admitting some allegations but denying the material allegations of the complaint, and by way of special and affirmative defenses and counterclaim, alleged as follows:

"(7) That this Honorable Court has no jurisdiction over the nature of the action or suit;

"(8) That the late Bernabe Consignado was the original owner of the residential land with the existing house thereon, located at 46 Avenida Rizal Street, Nagcarlan, Laguna, with an area of 86 Square meters, more or less, under Tax Declaration No. 19636;

"(9) That the residential land and house in question was inherited by his son, the late Florentino Consignado who have (sic) four (4) legitimate children, namely, Macario, Estibana, Margarita, and Marciana, all surnamed Consignado;

"(10) That the late Florentino Consignado's two daughters Estibana and Margarita Consignado had inherited

their respective shares and the residential land and house existing thereon was adjudicated to Macario Consignado and Marciana Consignado consisting of 86 Square meters and after deducting the respective shares of their relatives, Ofelia Urreta and Rosita Urreta of 14 square meters, each, the vacant portion of land within the 86 sq. meters, the remaining 58 square meters, which belongs in co-ownership to Macario Consignado and Marciana Consignado;

“(11) That during the lifetime of Macario Consignado, who was then residing in the house in land (sic) in question, plaintiff Marciana Consignado in conspiracy, connivance, and collusion with her two (2) sisters, Margarita and Estebana, all surnamed Consignado, with event (sic) bad faith and without the knowledge and consent of the former (Macario Consignado) caused the execution of a document of 'Pagpapatibay Ng Kabahagi Sa Samahang Pag-aari' on May 12, 1981 before Ex-Officio Notary (sic) Public, Judge Orlando R. Tuico, under Doc. No. 184; Page No. 21; Book No. IX; Series of 1981, appropriating (sic) to herself the whole 58 square meters of the residential land in question, registered the same with the Registered (sic) of Deeds in Sta. Cruz, Laguna and transferring the land in her name under Tax Declaration No. 25209, which xerox copy of the document is hereto attached as Annex '1' and made an integral part hereof;

“(12) That defendants Milagros Matining with her husband Heracleo Matining and their family was allowed by Macario Consignado who was then a widower, to rent the house and stay with him on August 5, 1976 paying a monthly rental of P30.00, but after one (1) month, Macario Consignado became sickly, so much so, that defendant and her family took care of Macario Consignado and Macario Consignado refused to accept payment of monthly rentals from defendant and her family;

“(13) That Macario Consignado in his illness was being cared for, by defendant even at the Veterans Memorial Medical Center in Quezon City, until his death on November 21, 1982;

“(14) That after four (4) years of constant care of defendant's family of Macario Consignado in his sickness and in consideration of Macario Consignado's love and affection to defendant and his (sic) family, Macario Consignado executed a Deed of Donation (Kasulatan ng Pagbibigay Pala) on August 27, 1980 before Notary Public, Venderlube Tubana, under Doc. No. 318; Page No. 67; Book No. 32; series of 1980, which xerox copy is hereto attached as Annex '2' and made an integral part hereof;

“(15) That on February 25, 1982 plaintiff Marciana Consignado and her brother Macario Consignado verbally decided to partition their co-ownership residential land and house in question, adjudicating 29 square meters of the aforecited residential land and house in the Southern portion to Macario Consignado and the 29 square meters in the Northern portion to plaintiff Marciana Consignado;

“(16) That as a consequence of the verbal partition between plaintiff Marciana Consignado and Macario Consignado the existing kitchen being located in the portion adjudicated to Macario Consignado, he requested the husband of defendant to remove the same;

“(17) That by virtue of the donation made by Macario Consignado to defendant and her husband in Annex '2' 's defendant because (sic) the owner of the 29 square meters of the residential land and house thereon, hereby depriving this Honorable Court to acquire jurisdiction over the nature of the action or suit, as ownership of the disputed portion exclusively belong (sic) to the jurisdiction of the Regional Trial Court;

x x x

After the preliminary conference and trial on the merits of the case, the MTC of Nagcarlan, Laguna rendered on 2 March 1987 a decision,⁴ the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs, Marciana Consignado and Nazario Asendido and against the defendants, Milagros Cuenco-Matining and Heracleo Matining, ordering the defendants to immediately vacate the premises in question and to turn over possession thereof to the plaintiffs, to pay the plaintiffs the sum of P30.00 a month as fair rental value of the property or reasonable compensation

for the use and occupation of the premises from April 14, 1985 per Exhibit 'E-2' until they finally vacate it, to pay P2,000.00 as reasonable attorney's fees, and to pay the cost of suit. For lack of merit, the counterclaim of the defendants is hereby denied.

"SO ORDERED."

From the aforesaid decision, the private respondents (as defendants) appealed to the RTC of San Pablo City, Laguna, Branch 29, their appeal being docketed therein as Civil Case No. SP-2886. On 12 May 1988, the said court rendered a decision,⁵ affirming the decision of the MTC of Nagcarlan, Laguna, the pertinent portion of which reads:

"The lower Court in its exhaustive decision, found that the evidence of ownership presented by the defendants is not sufficient to override plaintiff's evidence. It is correct. At least for the purpose of determining who should be the rightful possessors of the questioned premises. Plaintiffs, unless their right to ownership of the area in question, has not (sic) been defeated in an appropriate proceeding should be entitled to the possession of the land and house in controversy.

"ALL TOLD, there being no compelling reasons to disturb the decision of the lower Court, its decision is hereby affirmed en toto, with costs against defendants-appellants.

"SO ORDERED."

Dissatisfied, the private respondents appealed to the Court of Appeals, their appeal being docketed therein as CA-G.R. SP NO. 14729, assigning for resolution the sole issue of:

"WHETHER OR NOT PETITIONERS HERACLEO AND MILAGROS MATINING ARE ENTITLED TO OWN ONE HALF (1/2) PORTION OF THE PREMISES IN QUESTION."

On 15 February 1989, the Court of Appeals promulgated a decision,⁶ the dispositive portion of which reads as follows:

"WHEREFORE, the petition for review is PARTIALLY GRANTED. Petitioners Spouses Milagros and Heracleo Matining are entitled to the possession of only 11.16 square meters, southern portion of the subject house and lot, located at No. 46 Avenida Rizal, Nagcarlan, Laguna; they are, however, ordered to vacate the other portion of 17.84 square meters, the possession of which lawfully pertains to respondents-spouses Marciana Consignado and Nazario Asendido, and other co-owners.

"Petitioners are further ordered to pay the fair rental value as reasonable compensation for the use and occupancy of the 17.84 square meters from April 22, 1985, the date the demand letter to vacate was received by petitioners, until they finally vacate it. No attorney's fees may be awarded in favor of respondents in view of the partial relief adjudged in favor of petitioners. No costs.

"IT IS SO ORDERED."

The Court of Appeals held, among others, as follows:

"We agree with the petitioners.

"We find that the deed of donation (Exhibit 3) conforms with the required solemnities prescribed by Article 749 1/of the Civil Code in that both donation and its acceptance are written in the same public instrument and that the property donated can be identified by the designated boundaries.

"The subsequent insertion of the tax declaration, assessed value of the property, the area of the property conveyed are inconsequential to the validity of the donation as those matters are not required to be stated in the deed. Moreover, Article 750 of the Civil Code does not require that the deed of donation must expressly state

that a reservation has been made. That there was a reservation can be proved by evidence aliunde (extrinsic evidence). (Ed. of Registrar General of Spain, April 17, 1907, cited in p. 685, Paras, Civil Code of the Philippines Annotated, 10th Edition, 1981) To allow every unauthorized insertion of any matter into the deed of donation, or any other deed for that matter, to affect its validity would put the donor into the mercy of any mischievous person.

"The deed of donation of August 27, 1980 (Exhibit 3) was not registered under Section 113, P.D. 1529, known as the Property Registration Decree (effective June 11, 1978); but, registration with the Registry of property of the deed of donation is not a requisite for validity of the document between the parties and their assignees. As the deed of donation is formally and intrinsically valid and that no third persons with a better right or title to the property subject of the deed of donation would be prejudiced, the deed of donation has attained legal efficacy to the extent of Macario's share.

"4. Petitioners contend that the Regional Trial Court erred when it held that they are not entitled, as owners and possessors, to the southern portion of the house and lot with an area of twenty-nine (29) square meters.

"We do not agree.

"Macario Consignado, predecessor-in-interest of petitioners, as intestate heir to the estate of his father Florentino Consignado, is a co-owner to the estate only to the extent of the one-fifth (1/5) of the fifty-eight (58) square meters of the subject premises, or approximately 11.16 square meters. As co-owner, Macario Consignado, has full ownership of his part and he may therefore in accordance with Article 493 of the Civil Code, alienate, assign or mortgage it, and even substitute another person in its enjoyment. Thus, his share, equivalent only to 11.16 square meters, must be deemed to have been acquired by petitioners herein by virtue of the deed of donation executed in their favor. This conclusion finds support in the following cases:

'(1) The juridical concept of co-ownership is unity of the object or property and plurality of subjects (3 Manresa 386). Each co-owner, jointly with the other co-owners, is the owner of the whole property, but at the same time of the undivided aliquot part thereof (3 Manresa; 387). Each co-owner has the right to sell, assign or dispose of his share, unless personal rights are involved (Art. 399, Civil Code), and therefore, he may lose said rights to others, as by prescription thereof by a co-owner (Bargayo et al. vs. Camomot, 40 Phil. 857).' (Sixon vs. Fetelino (CA) 47, OG 300, cited p. 293, Padilla Civil Law, Vol. II, Seventh Edition, 1983). (Underscoring ours)

'(2) The fact that the agreement in question purported to sell a concrete portion of the hacienda does not render the sale void, for it is a well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so. "Quando res non valet ut ago, valeat quantum valere potest." (When a thing is of no force as I do it, it shall have as much force as it can have.'). It is plain that Margarita G. Vda. de Cuayong and her children of age intended to sell to intervenor no more than what they could legally and rightfully dispose of, and as they could convey only their ideal share, equivalent in value to 10,832 square meters of the hacienda, that ideal share alone must be deemed to have been the subject-matter of the sale in question. They are presumed to know the law that before partition, conventional or judicial, no coowner (sic) may dispose of any physically identified portion of the common property; and that any conveyance by a coowner (sic) is subject to the result of a subsequent partition. This interpretation of the contract does no harm to the minor daughters, as the sale in question is subject to the result of the partition which intervenor may demand.' (Lopez vs. Vda. De Cuayong 74 p. 601, 609) (Underscoring ours)

"In the present case, it appears that petitioners are occupying, to the exclusion and prejudice of private respondents, twenty-nine (29) square meters in the southern portion of the subject premises. To the extent of the excess area of 17.84 square meters occupied by petitioners from that which was assigned to them, should the latter be evicted therefrom."

Petitioners interpose the present petition, contending that the Court of Appeals erred: (1) in resolving the question of ownership as if actual title, not mere possession of subject premises, is involved in the instant case; (2) in considering evidence piecemeal or in isolation from the rest of the entire evidence to arrive at a conclusion; (3) in basing its findings or conclusion's on mere surmises, not on the evidence on record; (4) in changing the theory of the private respondents on appeal; and (5) in giving due course to private respondents' appeal in G.R. No. SP No. 14729.

It is a well-settled rule that -

"x x x inferior courts may not be divested of their jurisdiction over ejectment cases simply because the defendant sets up a claim of ownership over the litigated property. But where the question of possession can not be resolved without passing upon the issue of ownership, because the latter is inseparably linked with the former, the case must be dismissed, for the inferior court loses jurisdiction over the same."⁷

Otherwise stated -

"In actions of forcible entry and detainer, the main issue is possession de facto, independently of any claim of ownership or possession de jure that either party may set forth in his pleading. As incidents of the main issue of possession de facto, the inferior court can decide the questions of (a) whether or not the relationship between the parties is one of landlord and tenant; (b) whether or not there is a lease contract between the parties, the period of such lease contract and whether or not the lease contract has already expired; (c) the just and reasonable amount of the rent and the date when it will take effect; (d) the right of the tenant to keep the premises against the will of the land-lord; and (e) if the defendant has built on the land a substantial and valuable building and there is no dispute between the parties as to the ownership of the land and the building, their rights according to the Civil Code. Defendants' claim of ownership of the property from which plaintiff seeks to eject him is not sufficient to divest the inferior court of its jurisdiction over the action of forcible entry and detainer. However, if it appears during the trial that the principal issue relates to the ownership of the property in dispute and any question of possession which may be involved necessarily depends upon the result of the inquiry into the title, previous rulings of this Court are that the jurisdiction of the municipal or city court is lost and the action should be dismissed."⁸

In the case at bar, as can be gleaned from the decision of the MTC of Nagcarlan, Laguna, the evidence adduced by the parties show that the question of ownership is actually involved in the case and has to be resolved in order to decide the question of possession. Thus the said court held:

"From the evidence presented by the parties, this court finds the following undisputed facts; That the property in question was originally owned by Bernabe Consignado, which was inherited by operation of law, by his son, Florentino Consignado, which in turn, was allotted to his daughter the plaintiff, Marciana Consignado, by virtue of a deed of partition executed by her sisters, Estebana Consignado and Margarita Consignado on May 12, 1981 (Exhibit 'B'), to the exclusion of their brothers, Gelacio and Macario Consignado; that during the lifetime of Macario Consignado, he lived in subject house and lot, who in his old age, was taken cared of by the defendants who lived with him, starting (sic) from August 5, 1976 until his death.

"The plaintiffs' claim of ownership were (sic) based on the following documentary evidences; (a) a duly registered notarized document executed by plaintiffs sisters, Estebana and Margarita Consignado (Exhibit 'B') allotting the property in question to plaintiff, Marciana Consignado; (b) Real Property Tax Declaration Nos. 23642 and 25209 in the name of plaintiff, Marciana Consignado (Exhibits C and C-2) reinforced (sic) by the payment of taxes thereon (Exhibits D to D-4) and (c) the ancient private documents executed by the late Florentino Consignado and Gelacio Consignado (Exhibit H) instituting Margarita, Estebana and Marciana Consignado (the plaintiff) as heirs to inherit the property in question.

"The defendants interposed no objection to the ownership of a portion of the lot in question by plaintiff,

Marciana Consignado. They only claimed the portion which should be allotted to plaintiff's late brother Macario Consignado, whom they maintained as allegedly preterited by the execution of Exhibit 'H' and Exhibit 'B'.

"Hence, the crucial issue in the instant case is the claim of ownership of a portion of the subject house and not by defendants as may be gleaned from their position paper which states 'So it stands to reason that the 58 square meters, more or less, and the house thereon are owned in common by plaintiff Marciana Consignado and her late brother, Macario Consignado; and further maintained 'That on August 27, 1980, before the death of Macario Consignado, he donated 29 square meters, more or less, including the house, which portion of residential lot and house was verbally divided by plaintiff, Marciana Consignado and his brother Macario Consignado on February 29, 1982, so that 29 square meters, more or less, and the house thereon up to the present wherein the defendants claimed ownership' (see paragraphs 3 and 4 of defendants' position paper submitted by their counsel, Atty. Edilberto U. Coronado, dated December 4, 1985).

"On the foregoing stand of the defendants, this Court concludes that the claim of ownership over the 29 square meters, more or less, portion of the lot in question and the house thereon was on the sole basis of the unregistered 'Kasulatang Pagpapatibay Pala' executed in their favor by the late Macario Consignado on August 27, 1980 before the faith of Notary Public Vanderlube I. Tubana, marked in evidence as Exhibit '3'. Since the question of possession can not be resolved without deciding the issue of ownership, this Court tried to, resolve said issue only to determine the issue of possession, pursuant to the material provisions of Section 33 (2) of Batas Pambansa Blg. 129 and letter B (10) of the interim Rules of Court, a Supreme Court resolution dated January 11, 1983.

"In the ejection cases the question of ownership is brought in issue in the pleadings, the issue of ownership therein shall be resolved in conjunction with the issue of possession (See Sec. 3 (c) of Republic Act No. 5967)."

It will thus be seen from the evidence adduced during the trial before the MTC that the issues joined by the parties were not simply of possession de facto, but were those of possession de jure and of lawful title and ownership of the property in dispute. Such issues are beyond the jurisdiction of the MTC of Nagcarlan, Laguna to pass upon and decide.

Nor did the MTC of Nagcarlan, Laguna have concurrent jurisdiction with the Regional Trial Court to pass on both the issues of possession and ownership under Sec. 3(c) of RA No. 5967, which provides as follows:

"SEC. 3. Besides the civil cases over which the City Courts have jurisdiction under Section eighty-eight of Republic Act Numbered Two Hundred ninety-six, as amended, it shall likewise have concurrent jurisdiction with the Court of First Instance over the following:

x x x x x x x x

(c) In ejection cases where the question of ownership is brought in issue in the pleadings. The issue of ownership shall therein be resolved in conjunction with the issue of possession."

For, as held by this Court in *Pelaez vs. Reyes*:⁹

"x x x, We are of the considered opinion that the evident import of Section 3 above is to precisely grant to the city courts concurrent original jurisdiction with the courts of first instance over the cases enumerated therein, which include 'ejection cases where the question of ownership is brought in issue in the pleadings.' To sustain petitioner's contention about the meaning of the last phrase of paragraph (c) of said section regarding the resolution of the issue of ownership 'in conjunction with the issue of possession' is to disregard the very language of the main part of the section which denotes unmistakably a conferment upon the city courts of concurrent jurisdiction with the courts of first instance over ejection cases in which ownership is brought in

issue in the pleadings. It is to Us quite clear that the fact that the issue of ownership is to be resolved 'in conjunction with the issue of possession' simply means that both the issues of possession and ownership are to be resolved by the city courts. And the jurisdiction is concurrent with the Court of First Instance precisely because usually questions of title are supposed to be resolved by superior courts. In other words, this grant of special jurisdiction to city courts is to be distinguished from the power ordinarily accorded to municipal courts to receive evidence of title only for the purpose of determining the extent of possession in dispute." (emphasis supplied)

Considering, therefore, that the evidence presented by the parties during the trial before the municipal trial court show that the question of possession de facto could not be determined without settling that of possession de jure and ownership, the MTC of Nagcarlan, Laguna lost its jurisdiction over Civil Case No. 608 and the case should have been dismissed.

But the MTC of Nagcarlan, Laguna proceeded to render judgment in Civil Case No. 608 and, in turn, the private respondents herein, as defendants in the MTC, appealed the decision of the latter court to the RTC of Laguna. There-after, the parties filed with the RTC of Laguna their respective memoranda.¹⁰

Section 11, Rule 40 of the Rules of Court provides that -

"A case tried by an inferior court without jurisdiction over the subject matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to trial without objection to such juris-diction."

As the MTC of Laguna had no jurisdiction over the unlawful detainer case in view of the raised question of title or ownership over the property in dispute, the RTC of Laguna also had no appellate jurisdiction to decide the case on the merits. It should have dismissed the appeal. However, it had original jurisdiction to pass upon the controversy. It is to be noted, in this connection, that in their respective memoranda filed with the RTC of Laguna, the petitioners and private respondents did not object to the said court exercising its original juris-diction, instead, they discussed the merits of the case from their respective positions. The RTC of Laguna, therefore, could, as it did, decide the case on the merits in the exercise of its original jurisdiction pursuant to the aforequoted provisions of Section 11, Rule 40 of the Rules of Court. As held by this Court in *Cañeveral and Bautista v. Encarnacion*, et al., 95 Phil. 849, 852, thru Mr. Justice Roberto Concepcion:

"x x x x x x x x

Although the Court of First Instance had no appellate jurisdiction to decide the ejectment case on the merits, inasmuch as the municipal court had no original jurisdiction over said case, in view of the question of title to real property, upon which the right of possession was dependent (*Pedro Teodoro vs. Agapito Balatbat et al.* G.R. No. L-6314, decided on January 22, 1954) said court of first instance had original jurisdiction to pass upon such issue. What is more, it did exercise its original jurisdiction without any objection on the part of the Bautistas. Indeed, in their motion for reconsideration dated March 1, 1952, the latter merely assailed the accuracy of the findings of the court of first instance on the merits of the case, thus clearly accepting and, even, invoking the jurisdiction of the court to pass upon the same. The Bautistas did not question said jurisdiction until March 12, 1952, when they filed a pleading entitled 'additional ground for the reconsideration of the decision of the Court', alleging, for the first time, that the 'Court had no jurisdiction to try the case on the merits'. It was, however, too late to raise this issue, for the court had original jurisdiction over the case and had exercised it with the implied consent of the Bautistas (*Amor vs. Gonzales*, 42 Off. Gaz., [No. 12] p. 3203, 76 Phil., 481; *Zapanta vs. Bartolome, et al.*, CA-G.R. No. 2592, April 27, 1949, 46 Off. Gaz. [11] 5447). As provided in section 11, Rule 40, of the Rules of Court:

'A case tried by an inferior court without jurisdiction over the subject-matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction.'

In view of the foregoing, the petition is hereby denied and the case dismissed, with costs against the petitioners."

As previously stated, the RTC of Laguna affirmed en toto the decision of the MTC. On appeal to the Court of Appeals, said court partially granted the private respondents' petition for review when it decreed that "Spouses Milagros and Heracleo Matining are entitled to the possession of only 11.6 square meters, southern portion of the subject house and lot, located at No. 46 Avenida Rizal, Nagcarlan, Laguna; they are, however, ordered to vacate the other portion of 17.84 square meters, the possession of which lawfully pertains to respondents-spouses Marciana Consignado and Nazario Asendido, and other coowners (sic)."

Petitioners now contend, among others, that the Court of Appeals erred in resolving the question of ownership as if actual title, not mere possession of subject premises, is involved in the instant case.

The petitioners' contention is untenable. Since the MTC and RTC of Laguna decided the question of ownership over the property in dispute, on appeal the Court of Appeals had to review and resolve also the issue of ownership. Besides, the petitioners did not complain when the MTC and RTC of Laguna decided the issue of ownership in their favor; they are now precluded from assailing the Court of Appeals simply because, on appeal, it decided the same issue partially against them.

The Court, after a thorough review of the records, finds no cogent reason to disturb the findings and conclusions of the Court of Appeals in its questioned decision.

WHEREFORE, the petition is DENIED and the judgment of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Regalado, and Nocon, JJ., concur.

* Penned by Justice Jaime M. Lantin with the concurrence of Justices Luis A. Javellana and Asaali S. Isnani.

1 Rollo, p. 68

3 Ibid., p. 71.

4 Ibid., p. 107

5 Ibid., p. 125

6 Ibid., p. 40

7 De la Cruz vs. Court of Appeals, G.R. No. L-57454, 29 November 1984, 133 SCRA 520, 528 and cases cited therein. Ching vs. Hon. Antonio Q. Malaya, etc., et al., G.R. No. 56449, 31 August 1987, 153 SCRA 412.

8 Alvir vs. Hon. R. B. Vera, etc., et al., G.R. No. L-39338, 16 July 1984, 130 SCRA 357, 361

9 G.R. No. L-48168, 31 August 1978, 85 SCRA 233

10 Original Record, Vol. 2, pp. 785, 842

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