

**SPOUSES FLAVIO DEMAMAY AND ESTELITA DEMAMAY,
PETITIONERS, VS. COURT OF APPEALS, HON. SALVADOR P. DE
GUZMAN, JR., LUZON DEVELOPMENT BANK AND SPS. CESAR DE
RAMOS AND CECILIA DE RA...**

G.R. No. 87263. June 18, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue as to whether or not an action for annulment of sale, reconveyance or similar proceeding is a previous question before an action for ejectment or unlawful detainer may proceed is the focus of the dispute in this petition.

Petitioners were the registered owners of a parcel of land located in Calamba, Laguna covered by Transfer Certificate of Title No. T-35475 of the Register of Deeds of Laguna with an area of about 240 square meters. They mortgaged the same to the Luzon Development Bank (LDB for short) for the sum of P10,000.00 payable in installments in five years beginning July 29, 1977. As petitioners defaulted in the payment of the loan the LDB extra judicially foreclosed the mortgage on July 30, 1981 so the property was sold at public auction to LDB as the highest bidder. Upon failure of the petitioners to redeem the property within one year from the sale, title over the same was consolidated in favor of LDB on September 13, 1982 so that petitioners' title was cancelled and TCT No. T-89122 was issued to LDB.

On July 26, 1986, LDB filed in the Regional Trial Court of Laguna a petition for the issuance of a writ of possession docketed as RTC SLRC Case No. 111-83-C. Petitioners filed an opposition thereto. On February 26, 1986, the trial court issued an order authorizing the Clerk of Court to issue the corresponding writ of possession which was returned unsatisfied. On June 20, 1986, LDB filed a motion for demolition which was opposed by petitioners. Nevertheless the trial court granted the motion. A motion for reconsideration of said order was filed by petitioners wherein it was alleged that LDB was no longer the owner of the property inasmuch as it had already sold the same to spouses Cecilia de Ramos and Cesar de Ramos and the title thereto of LDB had been cancelled and replaced by TCT No. T-89122 in the name of said Ramos spouses, who have elected to file an unlawful detainer case against petitioners. The motion was granted.

On August 8, 1986, petitioners filed an action against the Ramos spouses and LDB in the Regional Trial Court of Laguna for annulment of sale, reconveyance of property with damages. The suit was docketed as RTC Civil Case No. 1031-86.

On August 13, 1986, the Ramos spouses filed an action for unlawful detainer against petitioners in the Municipal Trial Court of Calamba, Laguna docketed as Civil Case No. 2405. Petitioners filed their answer with cross claim alleging among others the pendency of the annulment case before the RTC. On motion of LDB the said cross claim was dismissed. On June 29, 1987 a decision was rendered ordering petitioners to vacate the property in question within sixty (60) days from receipt thereof, to pay attorney's fees in the amount of P2,000.00 and the

cost of the suit. The counterclaim was dismissed. Petitioners appealed the decision to the Regional Trial Court of Laguna but the same was affirmed. They filed a petition for review in the Court of Appeals wherein on October 7, 1988 a decision was promulgated dismissing the petition with costs against petitioners.[1] A motion for reconsideration filed by petitioners was denied by the appellate court in a resolution dated March 2, 1989.

Meanwhile the annulment case was dismissed by the trial court on the ground of res judicata. Petitioners appealed to the Court of Appeals wherein on September 21, 1988 a decision was rendered setting aside the appealed order of dismissal and remanding the records to the lower court for further proceedings and adjudication on the merits.[2] In said case the appellate court ruled that the petition for a writ of possession is not a bar to the prosecution of the annulment case.

Hence, the herein petition for review on certiorari wherein petitioners raise as errors allegedly committed by the appellate court in grave abuse of discretion, namely: (1) the failure to declare that the Municipal Trial Court has no jurisdiction over the unlawful detainer case due to the failure to allege in the complaint that private respondents Ramos spouses had prior physical possession of the property; and (2) that the proceedings in said unlawful detainer case should be suspended pending the resolution of the action for annulment of the sale, reconveyance and damages pending before the Regional Trial Court of Laguna.

On May 24, 1989 the petition was denied for failure of petitioners to sufficiently show that the respondent court had committed any reversible error in its questioned judgment. A motion for reconsideration was filed by petitioners to which an opposition was filed by private respondents. The parties were then required to submit their simultaneous memoranda. This requirement has been complied with by the parties.

On the first issue, petitioners contend that as they continued to be in physical possession of the property and in the absence of the jurisdictional allegation in the complaint for unlawful detainer that private respondents had prior physical possession of the property the lower court did not acquire jurisdiction over the case.

In the questioned decision of the respondent court dated October 7, 1988, the following disquisition was made:

"Under the provisions of Rule 70 of the Rules of Court, an unlawful detainer case may be filed by an landlord, vendor or vendee (like herein private respondents) against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract express or implied. Petitioners' right to possess the property in question terminated from the moment they ceased to be the owners thereof and the transfer of said ownership to Luzon Development Bank. This was bolstered by the issuance of a writ of possession turning over the possession thereof to the Bank, which in turn transferred its right of ownership or possession to private respondents, who in turn became the owners thereof entitled to its possession with the issuance in their name of the title to the property.

Premises considered. We find no reversible error of law or fact in the decision under review."[3]

We agree.

It is true that in forcible entry cases the plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant. However, in unlawful detainer cases, the plaintiff need not have been in prior physical possession of the property.[4]

The second issue is likewise devoid of merit. Pending in the Regional Trial Court (RTC), Laguna is an action for the annulment of the sale to private respondent, the foreclosure of mortgage, reconveyance and damages. Petitioners claims that the proceedings in the ejectment case must be suspended until after the said annulment case is resolved by the Court.

The Court takes note of the fact that some lessees, realizing that the action for unlawful detainer will be filed

against them shortly, "jump the gun" on the lessor by going to court first. They institute, for instance, actions for consignation of rentals, or for specific performance of alleged agreement for renewal of lease or as in this case for annulment of the sale, etc.

The advantage of having the question of possession of the leased premises determined in such an ordinary action of consignation, breach of contract or annulment of sale, instead of a summary ejectment suit, are obvious. The proceedings are not summary, and presumably would take longer than an action for unlawful detainer. The judgment against the lessee is not immediately executory and there is no need to file a supersedeas bond to stay execution, and the remedy of preliminary mandatory injunction is not usually available to the lessor.

The question is, may the pendency of such an action for consignation or specific performance, or annulment of a sale, as in this case, be successfully pleaded in abatement of an action for unlawful detainer? This Court has invariably given a negative answer.

In *Lim Si vs. Lim*,^[5] the lessee disagreed with the increased rental rate imposed by the lessor and brought in the Court of First Instance (CFI) a suit for consignation of rentals praying that the court fix the rate thereof and he be authorized to remain in the premises in the meantime. The lessor moved to dismiss, arguing that the issue raised should not be resolved in an action of consignation but in an unlawful detainer suit. Later, the lessor did in fact file an ejectment action against the lessee. The trial court dismissed the action. In sustaining the dismissal this Court citing *Pue, et al. vs. Gonzales*,^[6] held that consignation -

"is not the proper proceedings to determine the relation between landlord and tenant, the period of life of the lease of tenancy, the reasonableness of the amount of rental, the right of the tenant to keep the premises against the will of the landlord, etc. (which) questions should be decided in a case of ejectment or detainer."

and ruled as follows:

"The principle ***exactly covers the point at issue, i.e., that the disagreement between a lessor and a lessee as to the amount of rent to be paid by a lessee cannot be decided in an action of consignation but in that of forcible entry and unlawful detainer that the lessor institutes when the lessee refuses to pay the lessor the rents that he has fixed for the property. It may also be added that consignation is proper when there is a debt to be paid, which the debtor desires to pay and which the creditor refuses to receive, or neglects to receive, or cannot receive by reason of his absence. The purpose of consignation is to have the obligation or indebtedness extinguished. In the case at bar, plaintiff seeks to have the obligation determined and fixed, hence his action should not be one of consignation.*

For the foregoing reasons, we hold that plaintiff has no cause of action against defendant under the facts alleged in his complaint; that consignation is not the proper remedy; that it is the defendant who has the right or cause of against the plaintiff because the latter refuses to pay the rents fixed but does not leave the property; and that if the plaintiff claims that the amount of rents demanded by the defendant is unreasonable and he desires to have it fixed judicially, he may set forth the above facts as defenses in the action of ejectment filed by the defendant against him.***"*

The same ruling was rendered by this Court in *Teodoro vs. Mirasol*,^[7] where an action for specific performance to compel the lessor to renew the lease was held to be a proper defense in the ejectment suit.^[8] In the same vein this Court held that an action for reconveyance or action for reivindicatoria or quieting of title or injunction or reformation may not be pleaded in abatement of an ejectment suit.^[9]

The case of *Quiambao vs. Osorio*,^[10] invoked by petitioners cannot support their cause. In said case, the ejectment suit was sought to be suspended on the ground of the pendency of an administrative case in the Office of the Land Authority where the agreement of sale of the lot in question, on which respondents based their prior

possession, had already been cancelled by the Land Authority. Thus, this Court held the prudent course for the trial court to do is to hold the ejectment proceeding until after the determination of the administrative case. There is no analogy in the facts of the said case with the present case.

WHEREFORE, the petition is DENIED with costs against petitioners.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.
Griño-Aquino, J., on leave.

[1] Justice Nicolas P. Lapeña was the ponente, concurred in by Justices Segundino G. Chua and Bonifacio A. Cacdac, Jr.

[2] Justice Jose A. R. Melo was the ponente, concurred in by Justices Manuel C. Herrera and Jorge S. Imperial.

[3] Page 33, Rollo.

[4] Justice Florenz D. Regalado, Remedial Law Compendium, Vol. 1, page 458, 4th Ed., citing Aguilar vs. Cabrera, 74 Phil. 666; Bunay vs. Susana Realty Inc., L-30338, June 30, 1976; Pharma Industries Inc. vs. Pajarillaga, L-53788, Oct. 17, 1980.

[5] 98 Phil. 868 (1956).

[6] 87 Phil. 81 (1950).

[7] 99 Phil. 150 (1956).

[8] See also Pardo vs. Encarnacion, 22 SCRA 632 (1968); Desamito vs. Cuyeqkeng, 18 SCRA 1184 (1966).

[9] Del Rosario vs. Jimenez, 8 SCRA 549 (1963); Nacorda vs. Yatco, 17 SCRA 920 (1966); Quimpo vs. de la Victoria, 46 SCRA 139 (1972); Caseñas vs. Jandayan, 5 SCRA 83 (1962); Judith vs. Abragan, 66 SCRA 600 (1975).

[10] 158 SCRA 674 (1988).

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