Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FIORELLO R. JOSE,
Petitioner,

- versus -

ROBERTO ALFUERTO, ERNESTO BACAY, ILUMINADO BACAY, MANUEL BANTACULO, LETTY BARCELO, JING BERMEJO, MILNA BERMEJO, PABLO BERMEJO, JHONNY BORJA, BERNADETTE BUENAFE, ALFREDO CALAGOS, ROSAURO CALAGOS, ALEX CHACON, AIDA CONSULTA, CARMEN CORPUZ, RODOLFO DE VERA, ANA DELA ROSA, RUDY DING, JOSE ESCASINAS, GORGONIO ESPADERO, DEMETRIO ESTRERA, ROGELIO ESTRERA, EDUARDO EVARDONE, ANTONIO GABALEÑO, ARSENIA GARING, NARCING GUARDA, NILA LEBATO, ANDRADE LIGAYA, HELEN LOPEZ, RAMON MACAIRAN, DOMINGO NOLASCO, JR., FLORANTE NOLASCO, REGINA OPERARIO, CARDING ORCULLO, FELICISIMO PACATE, CONRADO PAMINDALAN, JUN PARIL, RENE SANTOS, DOMINADOR SELVELYEJO,

G.R. No. 169380

Present:

SERENO, *C.J.*,*
CARPIO, Chairperson,
BRION,
DEL CASTILLO, and
PEREZ, *JJ.*

Promulgated:

NOV 26 2012

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* Designated as Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Raffle dated November 26, 2012.

VILLAR, JOHN DOE, JANE DOE and Unknown Occupants of Olivares Compound, Phase II, Barangay San Dionisio, Parañaque City,
Respondents.
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D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the decision[1] dated March 14, 2005 of the Court of Appeals in CA-G.R. SP No. 80166. The Court of Appeals' decision reversed the decisions of the Regional Trial Court (*RTC*) of Parañaque City, Branch 257, and of the Metropolitan Trial Court (MeTC) of Parañaque City, Branch 77, by dismissing petitioner Fiorello R. Jose's complaint for ejectment against Roberto Alfuerto, Ernesto Bacay, Iluminado Bacay, Manuel Bantaculo, Letty Barcelo, Jing Bermejo, Milna Bermejo, Pablo Bermejo, Jhonny Borja, Bernadette Buenafe, Alfredo Calagos, Rosauro Calagos, Alex Chacon, Aida Consulta, Carmen Corpuz, Rodolfo De Vera, Ana Dela Rosa, Rudy Ding, Jose Escasinas, Gorgonio Espadero, Demetrio Estrera, Rogelio Estrera, Eduardo Evardone, Antonio Gabaleño, Arsenia Garing, Narcing Guarda, Nila Lebato, Andrade Ligaya, Helen Lopez, Ramon Macairan, Domingo Nolasco, Jr., Florante Nolasco, Regina Operario, Carding Orcullo, Felicisimo Pacate, Conrado Pamindalan, Jun Paril, Rene Santos, Dominador Selvelyejo, Rosario Ubaldo, Sergio Villar, John Doe, Jane Doe and Unknown Occupants of Olivares Compound, Phase II, *Barangay* San Dionisio, Parañaque City (respondents), on the ground that the petitioner's cause of action was not for unlawful detainer but for recovery of possession. The appellate court affirmed this decision in its resolution of August 22, 2005.[2]

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[1] *Rollo*, pp. 21-34; penned by Associate Justice Hakim S. Abdulwahid, and concurred in by Associate Justices Elvi John S. Asuncion and Estela M. Perlas-Bernabe (now Associate Justice of the Supreme Court).

[2] *Id*. at 36-37.

The dispute involves a parcel of land registered in the name of Rodolfo Chua Sing under Transfer Certificate of Title No. 52594,[3] with an area of 1919 square meters, located in *Barangay* San Dionisio, Parañaque City. Chua Sing purchased the land in 1991. On April 1, 1999, Chua Sing leased the property to the petitioner. Their contract of lease was neither notarized nor registered with the Parañaque City Registry of Deeds.[4]

The lease contract provided that:

> That the term of this lease shall be FIVE (5) years and renewable for the same period upon mutual agreement of the parties to commence upon the total eviction of any occupant or occupants. The LESSOR hereby transfers all its rights and prerogative to evict said occupants in favor of the LESSEE which shall be responsible for all expenses that may be incurred without reimbursement from the LESSOR. It is understood however that the LESSOR is hereby waiving, in favor of the LESSEE any and all damages that [may be] recovered from the occupants[.][5] (Underscore ours)

Significantly, the respondents already occupied the property even before the lease contract was executed.

On April 28, 1999, soon after Chua Sing and the petitioner signed the lease contract, the petitioner demanded in writing that the respondents vacate the property within 30 days and that they pay a monthly rental of ₱1,000.00 until they fully vacate the property.[6]

The respondents refused to vacate and to pay rent. On October 20, 1999, the petitioner filed an ejectment case against the respondents before Branch 77 of the Parañaque City MeTC, docketed as Civil Case No. 11344.[7] In this complaint, no mention was made of any proceedings before the *barangay*. Jose then brought the dispute before the *barangay* for

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3 *Id.* at 180-181.
4 *Id.* at 178-179.
5 *Id.* at 56.
6 *Id.* at 182-228.
7 *Id.* at 163.

conciliation.[8] The *barangay* issued a Certification to File Action on March 1, 2000.[9] Jose was then able to file an amended complaint, incorporating the proceedings before the *barangay* before the summons and copies of the complaint were served upon the named defendants.[10]

In the Amended Complaint[11] dated March 17, 2000, the petitioner claimed that as lessee of the subject property, he had the right to eject the respondents who unlawfully occupy the land. He alleged that:

> 7. Defendants, having been fully aware of their unlawful occupancy of the subject lot, have defiantly erected their houses thereat without benefit of any contract or law whatsoever, much less any building permit as sanctioned by law, but by mere tolerance of its true, lawful and registered owner, plaintiff's lessor.[12]

The petitioner also stated that despite his written demand, the respondents failed to vacate the property without legal justification. He prayed that the court order the respondents; (1) to vacate the premises; (2) to pay him not less than ₱41,000.00 a month from May 30,1999 until they vacate the premises; and (3) to pay him attorney's fees of no less than ₱50,000.00, and the costs of suit.[13]

In their Answer, the respondents likewise pointed out that they have been in possession of the land long before Chua Sing acquired the property in 1991, and that the lease contract between the petitioner and Chua Sing does not affect their right to possess the land. The respondents also presented a Deed of Assignment,[14] dated February 13, 2000, issued by David R. Dulfo in their favor. They argued that the MeTC had no

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8 CA *rollo*, pp. 162-184, 209. The records do not state when the conciliation meeting occurred. Nevertheless, the respondents did not dispute that the conciliation meeting took place during the MeTC proceedings, nor appear to have raised this as a ground for dismissal in their Amended Answer. However, in their Memorandum before the Court of Appeals, they stated that a conciliation meeting between the proper parties did not take place; it is unclear whether they were saying that no meeting between Chua Sing and the respondents took place or that no conciliation meeting between the petitioner and the respondents occurred. The CA did not resolve this issue, and no petition was filed before the Supreme Court by either party raising this issue, even if the respondents again raise it in their Memorandum before the Court.

9 CA *rollo*, pp. 162-184.

10 Motion to Admit Amended Complaint dated March 22, 2000. Records, volume I, p. 93.

11 *Rollo*, pp. 227-230.

12 *Id*. at 175.

13 *Id.* at 176.

14 *Id*. at 232-239.

jurisdiction over the case as the issue deals with ownership of the land, and sought the dismissal of the complaint for lack of cause of action and for lack of jurisdiction. They also filed a counterclaim for actual and moral damages for the filing of a baseless and malicious suit.

After the required position papers, affidavits and other pieces of evidence were submitted, the MeTC resolved the case in the petitioner's favor. In its decision[15] of January 27, 2003, the MeTC held that the respondents had no right to possess the land and that their occupation was merely by the owner's tolerance. It further noted that the respondents could no longer raise the issue of ownership, as this issue had already been settled: the respondents previously filed a case for the annulment/cancellation of Chua Sing's title before the RTC, Branch 260, of Parañaque City, which ruled that the registered owner's title was genuine and valid. Moreover, the MeTC held that it is not divested of jurisdiction over the case because of the respondents' assertion of ownership of the property. On these premises, the MeTC ordered the respondents to vacate the premises and to remove all structures introduced on the land; to each pay ₱500.00 per month from the date of filing of this case until they vacate the premises; and to pay Jose, jointly and severally, the costs of suit and ₱20,000.00 as attorney's fees.

On appeal before the RTC, the respondents raised the issue, among others, that no legal basis exists for the petitioner's claim that their occupation was by tolerance, "where the possession of the defendants was illegal at the inception as alleged in the complaint[,] there can be no tolerance."[16]

The RTC affirmed the MeTC decision of January 27, 2003. It issued its decision[17] on October 8, 2003, reiterating the MeTC's ruling that a case for ejectment was proper. The petitioner, as lessee, had the right to file the ejectment complaint; the respondents occupied the land by mere tolerance

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15 *Id*. at 137-141.
16 *Id.* at 44.
17 *Id*. at 126-136.

and their possession became unlawful upon the petitioner's demand to vacate on April 28, 1999. The RTC, moreover, noted that the complaint for ejectment was filed on October 20, 1999, or within one year after the unlawful deprivation took place. It cited *Pangilinan, et al. v. Hon. Aguilar, etc., et al.*[18] and *Yu v. Lara, et al.*[19] to support its ruling that a case for unlawful detainer was appropriate.

On March 14, 2005, the Court of Appeals reversed the RTC and MeTC decisions.[20] It ruled that the respondents' possession of the land was not by the petitioner or his lessor's tolerance. It defined tolerance not merely as the silence or inaction of a lawful possessor when another occupies his land; tolerance entailed permission from the owner by reason of familiarity or neighborliness. The petitioner, however, alleged that the respondents unlawfully entered the property; thus, tolerance (or authorized entry into the property) was not alleged and there could be no case for unlawful detainer. The respondents' allegation that they had been in possession of the land before the petitioner's lessor had acquired it in 1991 supports this finding. Having been in possession of the land for more than a year, the respondents should not be evicted through an ejectment case.

The Court of Appeals emphasized that ejectment cases are summary proceedings where the only issue to be resolved is who has a better right to the physical possession of a property. The petitioner's claim, on the other hand, is based on an *accion publiciana*: he asserts his right as a possessor by virtue of a contract of lease he contracted after the respondents had occupied the land. The dispositive part of the decision reads:

> WHEREFORE, the instant petition is GRANTED. The decision dated October 8, 2003 of the RTC, Branch 257, Parañaque City, in Civil Case No. 03-0127, is REVERSED and SET ASIDE and the amended complaint for ejectment is DISMISSED.[21]

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18 150 Phil. 166 (1972).
19 116 Phil. 1105 (1962).
20 *Supra* note 1.
21 *Id*. at 33.

The petitioner filed a motion for reconsideration,[22] which the Court of Appeals denied in its resolution[23] of August 22, 2005. In the present appeal, the petitioner raises before us the following issues:

> I
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> WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT THE CAUSE OF ACTION OF THE SUBJECT COMPLAINT IS NOT FOR UNLAWFUL DETAINER BUT FOR RECOVERY OF POSSESSION AND THEREFORE DISMISSIBLE
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> II
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> WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECIDING THE CASE BASED ON RESPONDENTS' MATERIAL CHANGE OF THEORY WHICH IS COMPLETELY INCONSISTENT WITH THEIR DEFENSES INVOKED BEFORE THE MUNICIPAL TRIAL COURT
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> III
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> WHETHER OR NOT THIS HONORABLE COURT MAY DECIDE THIS CASE ON THE MERITS TO AVOID CIRCUITOUS PROCEDURE IN THE ADMINISTRATION OF JUSTICE.[24]

The Court's Ruling

We find the petition unmeritorious.

Unlawful detainer is not the proper remedy for the present case.

The key issue in this case is whether an action for unlawful detainer is the proper remedy.

Unlawful detainer is a summary action for the recovery of possession of real property. This action may be filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold

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22 CA *rollo*, pp. 258-264.
23 *Rollo*, pp. 36-37.
24 *Id*. at 7.

possession by virtue of any contract, express or implied. In unlawful detainer, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. However, the defendant's possession became illegal when the plaintiff demanded that the defendant vacate the subject property due to the expiration or termination of the right to possess under the contract, and the defendant refused to heed such demand. A case for unlawful detainer must be instituted one year from the unlawful withholding of possession.[25]

The allegations in the complaint determine both the nature of the action and the jurisdiction of the court. The complaint must specifically allege the facts constituting unlawful detainer. In the absence of these allegations of facts, an action for unlawful detainer is not the proper remedy and the municipal trial court or the MeTC does not have jurisdiction over the case.[26]

In his amended complaint, the petitioner presents the following allegations in support of his unlawful detainer complaint:

> 3. On April 1, 1999, plaintiff leased from lessor, Mr. Rudy Chuasing, that parcel of lot owned and registered in [the] lessor's name, covering the area occupied by the defendants.
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> xxxx
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> 6. Plaintiff's lessor had acquired the subject property as early as 1991 through sale, thereafter the aforesaid Transfer Certificate of Title was subsequently registered under his name.
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> 7. Defendants, having been fully aware of their **unlawful occupancy** of the subject lot, have **defiantly erected their houses thereat without benefit of any contract or law** whatsoever, much less any building permit as sanctioned by law, but by mere tolerance of its true, lawful and registered owner, plaintiff's lessor.
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> 8. By reason of defendants' **continued unlawful occupancy** of the subject premises, plaintiff referred the matter to his lawyer who immediately sent a formal demand upon each of the defendants to vacate the

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25 *Estate of Soledad Manantan v. Somera*, G.R. No. 145867, April 7, 2009, 584 SCRA 81, 89-90.

26 *Id.* at 90; *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156.

> premises. Copies of the demand letter dated 28 April 1999 are xxx hereto attached as annexes "C" to "QQ[.]"
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> 9. Despite notice, however, defendants failed and refused and continues to fail and refuse to vacate the premises without valid or legal justification.[27] (emphasis ours)

The petitioner's allegations in the amended complaint run counter to the requirements for unlawful detainer. In an unlawful detainer action, the possession of the defendant was originally legal and his possession was permitted by the owner through an express or implied contract.

In this case, paragraph 7 makes it clear that the respondents' occupancy was unlawful from the start and was bereft of contractual or legal basis. In an unlawful detainer case, the defendant's possession becomes illegal only upon the plaintiff's demand for the defendant to vacate the property and the defendant's subsequent refusal. In the present case, paragraph 8 characterizes the defendant's occupancy as unlawful even before the formal demand letters were written by the petitioner's counsel. Under these allegations, the unlawful withholding of possession should not be based on the date the demand letters were sent, as the alleged unlawful act had taken place at an earlier unspecified date.

The petitioner nevertheless insists that he properly alleged that the respondents occupied the premises by mere tolerance of the owner. No allegation in the complaint nor any supporting evidence on record, however, shows when the respondents entered the property or who had granted them permission to enter. Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.

In *Sarona, et al. v. Villegas, et al.*,[28] the Court cited Prof. Arturo M. Tolentino's definition and characterizes "tolerance" in the following manner:

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27 *Rollo*, pp. 80-81.

28 131 Phil. 365, 372 (1968).

> Professor Arturo M. Tolentino states that acts merely tolerated are "those which by reason of neighborliness or familiarity, the owner of property *allows* his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who permits them out of friendship or courtesy." He adds that: "[t]hey are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, *permits* others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well." And, Tolentino continues, even though "this is *continued* for a long time, no right will be acquired by prescription." Further expounding on the concept, Tolentino writes: "There is tacit consent of the possessor to the acts which are merely tolerated. Thus, *not every case of knowledge and silence* on the part of the possessor *can be considered mere tolerance*. By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission. [citations omitted; italics supplied]

The Court has consistently adopted this position: **tolerance or permission must have been present at the beginning of possession; if the possession was unlawful from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed**.[29]

It is not the first time that this Court adjudged contradictory statements in a complaint for unlawful detainer as a basis for dismissal. In *Unida v. Heirs of Urban*,[30] the claim that the defendant's possession was merely tolerated was contradicted by the complainant's allegation that the entry to the subject property was unlawful from the very beginning. The Court then ruled that the unlawful detainer action should fail.

The contradictory statements in the complaint are further deemed suspicious when a complaint is silent regarding the factual circumstances surrounding the alleged tolerance. In *Ten Forty Realty Corporation v. Cruz*,[31] the complaint simply stated that: "(1) [defendant] immediately occupied the subject property after its sale to her, an action merely tolerated by [the plaintiff]; and (2) [the respondent's] allegedly illegal occupation of the premises was by mere tolerance." The Court expressed its qualms over

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[29] *Ten Forty Realty and Development Corporation v. Cruz*, 457 Phil. 603, 610 (2003); and *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 185 (2001).

[30] 499 Phil. 64, 70 (2005).

[31] *Supra* note 29, at 611.

these averments of fact as they did not contain anything substantiating the claim that the plaintiff tolerated or permitted the occupation of the property by the defendant:

> These allegations contradict, rather than support, [plaintiff's] theory that its cause of action is for unlawful detainer. First, these arguments advance the view that [defendant's] occupation of the property was unlawful at its inception. Second, they counter the essential requirement in unlawful detainer cases that [plaintiff's] supposed act of sufferance or tolerance must be present right from the start of a possession that is later sought to be recovered.
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> As the bare allegation of [plaintiff's] tolerance of [defendant's] occupation of the premises has not been proven, the possession should be deemed illegal from the beginning. Thus, the CA correctly ruled that the ejectment case should have been for forcible entry — an action that had already prescribed, however, when the Complaint was filed on May 12, 1999. The prescriptive period of one year for forcible entry cases is reckoned from the date of [defendant's] actual entry into the land, which in this case was on April 24, 1998.[32]

Similarly, in *Go, Jr. v. Court of Appeals*,[33] the Court considered the owner's lack of knowledge of the defendant's entry of the land to be inconsistent with the allegation that there had been tolerance.

In *Padre v. Malabanan*,[34] the Court not only required allegations regarding the grant of permission, but proof as well. It noted that the plaintiffs alleged the existence of tolerance, but ordered the dismissal of the unlawful detainer case because the evidence was "totally wanting as to when and under what circumstances xxx the alleged tolerance came about." It stated that:

> Judging from the respondent's Answer, the petitioners were never at all in physical possession of the premises from the time he started occupying it and continuously up to the present. For sure, the petitioners merely derived their alleged prior physical possession only on the basis of their Transfer Certificate of Title (TCT), arguing that the issuance of said title presupposes their having been in possession of the property at one time or another.[35]

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32 *Ibid.*
33 *Supra* note 29, at 186.
34 532 Phil. 714, 721 (2006).
35 *Ibid.*

Thus, the complainants in unlawful detainer cases cannot simply anchor their claims on the validity of the owner's title. Possession *de facto* must also be proved.

As early as the 1960s, in *Sarona, et al. v. Villegas, et al.*,[36] we already ruled that a complaint which fails to positively aver any overt act on the plaintiff's part indicative of permission to occupy the land, or any showing of such fact during the trial is fatal for a case for unlawful detainer. As the Court then explained, **a case for unlawful detainer alleging tolerance must definitely establish its existence from the start of possession; otherwise, a case for forcible entry can mask itself as an action for unlawful detainer and permit it to be filed beyond the required one-year prescription period from the time of forcible entry**:

> A close assessment of the law and the concept of the word "tolerance" confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer — not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons: *First*. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress — in the inferior court — provided for in the rules. If one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. *Second*. If a forcible entry action *in the inferior court* is allowed after the lapse of a number of years, then the result may well be that no action of forcible entry can really prescribe. No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court — upon plea of tolerance to prevent prescription to set in — and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one year time-bar to the suit is but in pursuance of the summary nature of the action.[37] (italics supplied)

Given these rulings, it would be equally dangerous for us to deprive the respondents of possession over a property that they have held for at least eight years before the case was filed in 1999, by means of a summary

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36 *Supra* note 28, at 371-372.

37 *Id*. at 373.

proceeding, simply because the petitioner used the word "tolerance" without sufficient allegations or evidence to support it.

There was no change in the respondents' theory during the appeal that would amount to a deprivation of the petitioner's right to due process.

The petitioner alleges that the respondents had never questioned before the MeTC the fact that their occupancy was by tolerance. The only issues the respondents allegedly raised were: (1) the title to the property is spurious; (2) the petitioner's predecessor is not the true owner of the property in question; (3) the petitioner's lease contract was not legally enforceable; (4) the petitioner was not the real party-in-interest; (5) the petitioner's predecessor never had prior physical possession of the property; and (6) the respondents' right of possession was based on the "Deed of Assignment of Real Property" executed by Dulfo. The respondents raised the issue of tolerance merely on appeal before the RTC. They argue that this constitutes a change of theory, which is disallowed on appeal.[38]

It is a settled rule that a party cannot change his theory of the case or his cause of action on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court will not be considered by the reviewing court. The defenses not pleaded in the answer cannot, on appeal, change fundamentally the nature of the issue in the case. To do so would be unfair to the adverse party, who had no opportunity to present evidence in connection with the new theory; this would offend the basic rules of due process and fair play.[39]

While this Court has frowned upon changes of theory on appeal, this rule is not applicable to the present case. The Court of Appeals dismissed

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[38] *Rollo*, pp. 11-14.

[39] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 535 Phil. 481, 489-490; *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 934-935 (2003); and *Olympia Housing, Inc. v. Panasiatic Travel Corporation*, 443 Phil. 385, 399-400 (2003).

the action due the petitioner's failure to allege and prove the essential requirements of an unlawful detainer case. In *Serdoncillo v. Spouses Benolirao,*[40] we held that:

> In this regard, to give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint must sufficiently show such a statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, without resort to parol testimony, as these proceedings are summary in nature. In short, the jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, **as where it does not state how entry was effected or how and when dispossession started,** the remedy should either be an *accion publiciana* or *accion reivindicatoria*. (emphasis ours; italics supplied)

Regardless of the defenses raised by the respondents, the petitioner was required to properly allege and prove when the respondents entered the property and that it was the petitioner or his predecessors, not any other persons, who granted the respondents permission to enter and occupy the property. Furthermore, it was not the respondents' defense that proved fatal to the case but the petitioner's contradictory statements in his amended complaint which he even reiterated in his other pleadings.[41]

Although the respondents did not use the word "tolerance" before the MeTC, they have always questioned the existence of the petitioner's tolerance. In their Answer to Amended Complaint, the respondents negated the possibility of their possession of the property under the petitioner and his lessor's tolerance when the respondents alleged to have occupied the premises even before the lessor acquired the property in 1991. They said as much in their Position Paper:

> RODOLFO CHUA SING never had actual physical possession of his supposed property, as when he became an owner of the 1,919 square meters property described in TCT No. 52594, the property had already been occupied by herein DEFENDANTS since late 1970. Therefore, DEFENDANTS were already occupants/possessors of the property from where they are being ejected by FIORELLO JOSE, a supposed LESSEE of

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40 358 Phil. 83, 95 (1998).

41 *Rollo*, pp. 5, 95, 163.

> a property with a dubious title. The main thing to be proven in the case at bar is prior possession and that the same was lost through force, intimidation, threat, strategy and stealth, so that it behooves the court to restore possession regardless of title or even ownership xxx. In the case at bar, neither RODOLFO CHUA SING nor herein PLAINTIFF ever had any actual physical possession of the property where DEFENDANTS have already possessed for more than ten (10) years in 1991 when RODOLFO CHUA SING got his fake title to the property[.][42] (citation omitted)

In addition, whether or not it was credible, the respondent's claim that their possession was based on the Deed of Assignment executed by Dulfo, in behalf of the estate of Domingo de Ocampo, shows that they considered the petitioner and his lessor as strangers to any of their transactions on the property, and could not have stayed there upon the latter's permission.

We note that even after the issue of tolerance had been directly raised by the respondents before the RTC, the petitioner still failed to address it before the RTC, the Court of Appeals, and the Supreme Court.[43] At best, he belatedly states for the first time in his Memorandum[44] before this Court that his lessor had tolerated the respondents' occupancy of the lot, without addressing the respondents' allegation that they had occupied the lot in 1970, before the petitioner's lessor became the owner of the property in 1991, and without providing any other details. His pleadings continued to insist on the existence of tolerance without providing the factual basis for this conclusion. Thus, we cannot declare that the Court of Appeals had in anyway deprived the petitioner of due process or had unfairly treated him when it resolved the case based on the issue of tolerance.

The Court cannot treat an ejectment case as an *accion publiciana* or *accion reivindicatoria*.

The petitioner argues that assuming this case should have been filed as an *accion publiciana* or *accion reivindicatoria*, this Court should still

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42 CA *rollo*, p. 147.
43 *Rollo*, pp. 3-17, 88-92, 173-177.
44 *Id.* at 95-111.

resolve the case, as requiring him to properly refile the case serves no other ends than to comply with technicalities.[45]

The Court cannot simply take the evidence presented before the MeTC in an ejectment case and decide it as an *accion publiciana* or *accion reivindicatoria*. These cases are not interchangeable and their differences constitute far more than mere technicalities.

In *Regis, Jr. v. Court of Appeals*,[46] we ruled that an action for forcible entry cannot be treated as an *accion publiciana* and summarized the reasons therefor. We find these same reasons also applicable to an unlawful detainer case which bears the same relevant characteristics:

> On the issue of whether or not an action for forcible entry can be treated as *accion publiciana*, we rule in the negative. Forcible entry is distinct from *accion publiciana*. *First*, forcible entry should be filed within one year from the unlawful dispossession of the real property, while *accion publiciana* is filed a year after the unlawful dispossession of the real property. *Second*, forcible entry is concerned with the issue of the right to the physical possession of the real property; in *accion publiciana*, what is subject of litigation is the better right to possession over the real property. *Third*, an action for forcible entry is filed in the municipal trial court and is a summary action, while *accion publiciana* is a plenary action in the RTC. [italics supplied]

The cause of action in ejectment is different from that in an *accion publiciana* or *accion reivindicatoria*. An ejectment suit is brought before the proper inferior court to recover physical possession only or possession *de facto*, **not** possession *de jure*. Unlawful detainer and forcible entry cases are not processes to determine actual title to property. Any ruling by the MeTC on the issue of ownership is made only to resolve the issue of possession, and is therefore inconclusive.[47]

Because they only resolve issues of possession *de facto*, ejectment actions are summary in nature, while *accion publiciana* (for the recovery

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45 *Id*. at 16.

46 G.R. No. 153914, July 31, 2007, 528 SCRA 611, 620.

47 *A. Francisco Realty and Development Corporation v. CA*, 358 Phil. 833, 841-842; *and Spouses Refugia v. CA*, 327 Phil. 982, 1004 (1996).

of possession) and *accion reivindicatoria* (for the recovery of ownership) are plenary actions.[48] The purpose of allowing actions for forcible entry and unlawful detainer to be decided in summary proceedings is to provide for a peaceful, speedy and expeditious means of preventing an alleged illegal possessor of property from unjustly taking and continuing his possession during the long period it would take to properly resolve the issue of possession *de jure* or ownership, thereby ensuring the maintenance of peace and order in the community; otherwise, the party illegally deprived of possession might take the law in his hands and seize the property by force and violence.[49] An ejectment case cannot be a substitute for a full-blown trial for the purpose of determining rights of possession or ownership. Citing *Mediran v. Villanueva*,[50] the Court in *Gonzaga v. Court of Appeals*[51] describes in detail how these two remedies should be used:

> In giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who in fact has actual possession; and in case of controverted right, it requires the parties to preserve the *status quo* until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending [the] decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction; and he [cannot] be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an [action] to try the property right. [italics supplied]

Thus, if we allow parties to file ejectment cases and later consider them as an *accion publiciana* or *accion reivindicatoria*, we would encourage parties to simply file ejectment cases instead of plenary actions. Courts would then decide in summary proceedings cases which the rules intend to be resolved through full-blown trials. Because these "summary" proceedings will have

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48 *Custodio v. Corrado*, 479 Phil. 415, 427 (2004).
49 *Spouses Refugia v. CA, supra* note 47, at 1007.
50 37 Phil. 752, 761 (1918).
51 G.R. No. 130841, February 26, 2008, 546 SCRA 532, 540-541.

to tackle complicated issues requiring extensive proof, they would no longer be expeditious and would no longer serve the purpose for which they were created. Indeed, we cannot see how the resulting congestion of cases, the hastily and incorrectly decided cases, and the utter lack of system would assist the courts in protecting and preserving property rights.

WHEREFORE, we **DENY** the petition, and **AFFIRM** the Court of Appeals' decision dated March 14, 2005 and resolution dated August 22, 2005 in CA-G.R. SP No. 80166.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice