Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARK ANTHONY ESTEBAN (in substitution of the deceased GABRIEL O. ESTEBAN),
Petitioner,

- versus -

SPOUSES RODRIGO C. MARCELO and CARMEN T. MARCELO,
Respondents.

G.R. No. 197725

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JUL 31 2013

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DECISION

BRION, *J.:*

Before the Court is a petition for review on *certiorari,*[1] filed under Rule 45 of the Rules of Court, assailing the decision[2] dated January 17, 2011 and the resolution[3] dated July 15, 2011 of the Court of Appeals *(CA)* in CA-G.R. SP No. 112609.

The Facts

The late Gabriel O. Esteban, substituted by his son, petitioner Mark Anthony Esteban,[4] had been in possession of a piece of land located at 702 Tiaga St., Barangka Drive, Mandaluyong City, since the 1950s.[5] In the 1960s, the late Esteban's sister constructed a foundry shop at the property. In the 1970s, after the foundry operations had proven unproductive, the respondents-spouses Rodrigo and Carmen Marcelo were allowed to reside therein, for a monthly rental fee of ₱50.00. Since March 2001, the

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1 *Rollo*, pp. 9-24.
2 Id. at 31-47; penned by Associate Justice Stephen C. Cruz, and concurred in by Associate Justices Isaias P. Dicdican and Michael P. Elbinias.
3 Id. at 49-53.
4 Id. at 54.
5 Id. at 120.

respondents-spouses have stopped paying the rental fee (which by that time amounted to ₱160.00). On October 31, 2005, the late Esteban, through a lawyer, sent the respondents-spouses a demand letter requiring them to settle their arrears and to vacate within five (5) days from receipt thereof.[6] For failure to comply with the demand to pay and to vacate, the late Esteban instituted an unlawful detainer case against the respondents-spouses on December 6, 2005.

The MeTC's and RTC's Rulings

In its April 23, 2009 decision,[7] the **Metropolitan Trial Court (MeTC)** ruled that there was a valid ground for ejectment; with the jurisdictional demand to vacate complied with, the respondents-spouses must vacate the property, pursuant to paragraphs 1 and 2, Article 1673 of the New Civil Code,[8] on the grounds of expiration of the lease and non-payment of monthly rentals. The MeTC likewise ordered the respondents-spouses to pay back rentals and rentals, plus legal interest until they shall have vacated the property, attorney's fees and cost of the suit. On appeal, the Regional Trial Court (*RTC*) fully affirmed the MeTC ruling.[9]

The CA Ruling

The respondents-spouses appealed the RTC's ruling to the CA.

In its January 17, 2011 decision,[10] **the CA reversed the RTC.** The CA ruled that from the year of dispossession in 2001 when the respondents-spouses stopped paying rent, until the filing of the complaint for ejectment in 2005, more than a year had passed; hence, the case no longer involved an *accion interdictal*[11] cognizable by the MeTC, but an *accion publiciana*[12] that should have been filed before the RTC.[13] Therefore, the MeTC had no jurisdiction over the case so that its decision was a nullity. Likewise, the Court ruled that the respondents-spouses cannot be evicted as they are

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6 Id. at 59.

7 Penned by Judge Lizabeth Gutierrez-Torres, MeTC of Mandaluyong City, Branch 60; id. at 119-124.

8 The lessor may judicially eject the lessee for any of the following causes:

(1) When the period agreed upon, or that which is fixed for the duration of leases under articles 1682 and 1687, has expired;

(2) Lack of payment of the price stipulated[.]

9 *Rollo*, pp. 137-142; penned by Judge Ofelia L. Calo.

10 *Supra* note 2.

11 *Accion Interdictal* is the summary action for Forcible entry and detainer which seeks the recovery of physical possession only and is brought within one (1) year in the justice of the peace court (*Reyes v. Judge Sta. Maria*, 180 Phil. 141, 145 (1979), citing Moran's Comments on the Rules of Court, 1970 Ed., p. 298).

12 *Accion Publiciana* is recovery of the right to possess and is a plenary action in an ordinary civil proceeding in the RTC (*Reyes v. Judge Sta. Maria*, *supra*).

13 *Rollo*, p. 38.

protected by Section 6 of Presidential Decree No. (P.D.) 1517.[14] Finally, the CA ruled that the respondents-spouses qualifies as beneficiary under Section 16 of Republic Act No. (RA) 7279.[15]

In its July 15, 2011 resolution, the CA denied the respondents-spouses' partial motion for reconsideration anchored on the petitioner's failure to effect a substitution of parties upon the death of the late Esteban. The CA reasoned out that mere failure to substitute a deceased party is not a sufficient ground to nullify a trial court's decision.[16] The CA also reiterated its finding against the petitioner that since the time of dispossession, more than one year had passed; hence, the case was an *accion publiciana* that should have been commenced before the RTC.[17]

The Parties' Arguments

The petitioner filed the present petition for review on *certiorari* to assail the CA rulings. The petitioner argues that the case has been properly filed as an *accion interdictal* cognizable by the MeTC and was filed on December 6, 2005, or within the one-year prescriptive period counted from the date of the last demand on October 31, 2005; hence, the MeTC had proper jurisdiction over the case.

The petitioner further argues that contrary to the CA's findings, the failure to pay did not render the possession unlawful; it was the failure or refusal to vacate after demand and failure to pay that rendered the occupancy unlawful.[18]

The petitioner likewise points out that the respondents-spouses are not covered by P.D. 1517 as there was no showing that the subject lot had been declared an area for priority development or for urban land reform.

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[14] PROCLAIMING URBAN LAND REFORM IN THE PHILIPPINES AND PROVIDING FOR THE IMPLEMENTING MACHINERY THEREOF; Section 6. *Land Tenancy in Urban Land Reform Areas.* Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree. [italics supplied]

[15] AN ACT TO PROVIDE FOR A COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES; Section 16. Eligibility Criteria for Socialized Housing Program Beneficiaries. - To qualify for the socialized housing program, a beneficiary:

a) Must be a Filipino citizen;
b) Must be an underprivileged and homeless citizen, as defined in Section 3 of this Act; c) Must not own any real property whether in the urban or rural areas; and
d) Must not be a professional squatter or a member of squatting syndicates.

[16] *Rollo*, pp. 52-53.

[17] Id. at 52.

[18] Id. at 7.

Finally, the petitioner avers that it was improper for the CA to rule that the respondents-spouses are qualified beneficiaries under the RA 7279 as this point was not in issue and should not have been covered by the appellate review.

In their comment to the petition,[19] the respondents-spouses claim that the substitution of petitioner was irregular as the other compulsory heirs of the late Esteban had not been made parties to the present case.

The Court's Ruling

The Court finds the petition meritorious.

The one-year prescription period is counted from the last demand to pay and vacate

As correctly pointed out by the petitioner, there should first be a *demand to pay or to comply with the terms of the lease* ***and*** *a demand to vacate* before unlawful detainer arises. The Revised Rules of Court clearly so state.[20]

Since 1947, case law has consistently upheld this rule. "Mere failure to pay rents does not *ipso facto* make unlawful tenant's possession of the premises. It is the owner's **demand for tenant to vacate the premises, when the tenant has failed to pay the rents on time, and tenant's refusal or failure to vacate, which make unlawful withholding of possession.**"[21] In 2000, we reiterated this rule when we declared: "It is therefore clear that before the lessor may institute such action, he must make a demand upon the lessee to pay or comply with the conditions of the lease and to vacate the premises. It is the owner's demand for the tenant to vacate the premises and the tenant's refusal to do so which makes unlawful the withholding of possession. Such refusal violates the owner's right of possession giving rise to an action for unlawful detainer."[22]

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[19] Id. at 148-150.

[20] Rule 70, Section 2. Lessor to proceed against lessee only after demand. Unless otherwise stipulated, such action by the lessor shall be commenced only **after demand to pay or comply with the conditions of the lease and to vacate** is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings. [emphasis ours]

[21] *Canaynay v. Sarmiento*, 79 Phil. 36, 40 (1947). Emphases ours; italics supplied.

[22] *Siapian v. Court of Appeals*, 383 Phil. 753, 762 (2000), citing *Dio v. Concepcion*, G.R. No. 129493, September 25, 1998, 296 SCRA 579, 590. Emphases ours.

Furthermore, in cases where there were more than one demand to pay and vacate, the reckoning point of one year for filing the unlawful detainer is from the last demand as the lessor may choose to waive his cause of action and let the defaulting lessee remain in the premises.[23]

P.D. 1517 does not apply: in the absence of showing that the subject land has been declared and classified as an Area for Priority Development and as a Land Reform Zone

It was an error for the CA to rule that the respondents-spouses could not be ousted because they were protected by P.D. 1517. This decree, in fact, does not apply to them.

In *Sps. Frilles v. Sps. Yambao*,[24] the Court traced the purpose, development and coverage of P.D. 1517. The Court declared in this case that the purpose of the law is to protect the rights of legitimate tenants who have resided for 10 years or more on specific parcels of land situated in declared Urban Land Reform Zones or Urban Zones, and who have built their homes thereon. These legitimate tenants have the right not to be dispossessed and to have the right of first refusal to purchase the property under reasonable terms and conditions to be determined by the appropriate government agency.[25]

Subsequent to P.D. 1517, then President Ferdinand Marcos issued Proclamation No. 1893 on September 11, 1979, declaring the entire Metropolitan Manila area an Urban Land Reform Zone for purposes of urban land reform. On May 14, 1980, he issued Proclamation No. 1967, amending Proclamation No. 1893 and identifying 244 sites in Metropolitan Manila as Areas for Priority Development and Urban Land Reform Zones. The Proclamation pointedly stated that: "[t]he provisions of P.D. Nos. 1517, 1640 and 1642 and of LOI No. 935 shall apply only to the above-mentioned Areas for Priority Development and Urban Land Reform Zones."

"Thus, a legitimate tenant's right of first refusal to purchase the leased property under P.D. No. 1517 depends on whether the disputed property in Metropolitan Manila is situated in an area specifically declared to be **both** an Area for Priority Development **and** Urban Land Reform Zone."[26]

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23 *Cañiza v. CA*, 335 Phil. 1107, 1117 (1997).
24 433 Phil. 715, 721-724. Citations omitted.
25 Id. 721.
26 Id. at 724.

Based on the cited issuances, we find it clear that for P.D. 1517 to apply, the tenants must have been a legitimate tenant for ten (10) years who have built their homes on the disputed property. These circumstances do not obtain in the present case as it was not the respondents-spouses who built their dwelling on the land; it was the late Esteban's sister who had the foundry shop built in the 1960s and eventually leased the property to the respondents-spouses in the 1970s. Even assuming that these two requirements have been complied with, P.D. 1517 still will not apply as the issue raised in the present petition is not the right of first refusal of the respondents-spouses, but their non-payment of rental fees and refusal to vacate. In fact, it was their non-payment of rental fees and refusal to vacate which caused the petitioner's predecessor to file the action for unlawful detainer.

Finally, even assuming that the aforementioned circumstances were present, the respondents-spouses still cannot qualify under P.D. 1517 in the absence of any showing that the subject land had been declared an area for priority development and urban land reform zone.

Issues not raised may not be considered and ruled upon

The rule on the propriety of resolving issues not raised before the lower courts cannot be raised on appeal: "points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule."[27]

As the petitioner correctly observed, the respondents-spouses never intimated, directly or indirectly, that they were seeking the protection of RA 7279. Therefore, the CA did not have any authority to rule that the respondents-spouses qualified as beneficiaries under RA 7279.

Any one of the co-owners may bring an action for ejectment

We see no merit in the respondents-spouses' observation that the present petition is irregular because the other compulsory heirs (or co-owners) have not been impleaded. The present petition has been properly filed under the express provision of Article 487 of the Civil Code.[28]

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[27] *Nunez v. SLTEAS Phoenix Solutions, Inc.*, G.R. No. 180542, April 12, 2010, 618 SCRA 134, 145. Citations omitted.

[28] Article 487. Any one of the co-owners may bring an action in ejectment.

In the recent case of *Rey Castigador Catedrilla v. Mario and Margie Lauron*,[29] we explained that while all co-owners are real parties in interest in suits to recover properties, anyone of them may bring an action for the recovery of co-owned properties. Only the co-owner who filed the suit for the recovery of the co-owned property becomes an indispensable party thereto; the other co-owners are neither indispensable nor necessary parties.

WHEREFORE, in view of the foregoing, the Court **GRANTS** the petition for review on *certiorari*. The decision dated January 17, 2011 and the resolution dated July 15, 2011 of the Court of Appeals in CA-G.R. SP No. 112609 are hereby **REVERSED and SET ASIDE**. The decision dated January 13, 2010 of the Regional Trial Court, Branch 211, Mandaluyong City, in Civil Case No. 20270, is hereby **REINSTATED**. Costs against the respondents spouses Rodrigo and Carmen Marcelo.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

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[29] G.R. No. 179011, April 15, 2013, citing *Wee v. De Castro*, G.R. No. 176405, August 20, 2008, 562 SCRA 695.

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