



Republic of the Philippines  
Supreme Court  
Baguio City

CERTIFIED TRUE COPY

*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

JUN 14 2016

THIRD DIVISION

ROGELIO ROSARIO, RUDY  
ROSARIO, MARY ANN  
GUTIERREZ, SYLVIA  
CASTILLO, LOURDES JOSE,  
LORENA ESTEPA, VIRGINIA  
ESTEPA AND REMEDIOS  
SABADO,

Petitioners,

G.R. No. 199464

Present:

VELASCO, JR., J.,  
*Chairperson,*  
PERALTA,  
PEREZ,  
REYES, and  
JARDELEZA, JJ.

- versus -

RIZALITO F. ALBA,

Respondent.

Promulgated:

April 18, 2016

*Wilfredo V. Lapitan*

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DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by Rogelio Rosario (Rogelio), Rudy Rosario, Mary Ann Gutierrez, Sylvia Castillo, Lourdes Jose, Lorena Estepa, Virginia Estepa and Remedios Sabado (petitioners) against Rizalito F. Alba (respondent) assailing the Decision<sup>2</sup> dated August 5, 2011 of the Court of Appeals (CA), and the Resolution<sup>3</sup> dated November 10, 2011 denying the motion for reconsideration thereof in CA-G.R. SP No.

<sup>1</sup> *Rollo*, pp. 9-37.

<sup>2</sup> Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rebecca De Guia-Salvador and Amy C. Lazaro-Javier concurring; id. at 38-49.

<sup>3</sup> Id. at 50.

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110189. The CA reversed the Decision<sup>4</sup> dated June 30, 2009 of the Regional Trial Court (RTC) of Bauang, La Union, Branch 33, in Civil Case No. 1876-Bg, and reinstated the Decision<sup>5</sup> dated January 10, 2009 of the Municipal Trial Court (MTC) of Bauang, La Union, in Civil Case No. 1074.

### The Facts

The instant petition stemmed from a complaint for ejectment<sup>6</sup> filed by the respondent against the petitioners before the MTC.

The subject properties originally formed part of a parcel of land belonging to the estate of the late Urbano Rosario (Urbano) and Vicenta Zarate (Vicenta). By virtue of a Decision<sup>7</sup> dated August 23, 2001 of the RTC of Bauang, La Union, Branch 67, in Civil Case No. 1151-Bg (*for Revival of Judgment*), which was rendered pursuant to a Compromise Agreement<sup>8</sup> executed among the heirs to the said estate, namely, Jovencio Rosario, et al., Luzviminda Romero and Luz Florendo-Alba (Luz), the subject properties were adjudged as shares of Luz.<sup>9</sup>

The respondent is the son and only surviving legal heir of Luz while the petitioners are fellow heirs to the estate of Urbano and Vicenta. As found by the courts below, the petitioners introduced residential dwellings and other improvements on the subject properties even before the death of Luz. After Luz died, the respondent sent out written notices to vacate upon the petitioners; the last one was sent as a registered mail on November 9, 2007, and was duly received by the petitioners on November 12 and 14, 2007.<sup>10</sup> Because of the petitioners' refusal to leave, the respondent instituted the action for ejectment on June 10, 2008.<sup>11</sup>

In their Answer,<sup>12</sup> the petitioners claimed that the subject properties were already sold by Luz to Rogelio, and to Pablo Rosario, the latter being the predecessor-in-interest of the other petitioners even before the execution

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<sup>4</sup> Rendered by Judge Rose Mary R. Molina-Alim; records, pp. 145-153.

<sup>5</sup> Rendered by Judge Romeo V. Perez; id. at 103-107.

<sup>6</sup> Id. at 1-4.

<sup>7</sup> Id. at 7-9.

<sup>8</sup> Id. at 72-74.

<sup>9</sup> Id. at 7, 103.

<sup>10</sup> Id. at 10-17.

<sup>11</sup> Id. at 1-4.

<sup>12</sup> Id. at 21-24.

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of the Compromise Agreement in Civil Case No. 1151-Bg. This was allegedly proved by duly notarized deeds of sale.<sup>13</sup>

### **Ruling of the MTC**

On January 10, 2009, the MTC rendered its Decision. It found that the petitioners' possession was merely tolerated, which became unlawful after the respondent demanded them to vacate the subject properties. Anent the petitioners' claim that the subject properties were already sold to their predecessors-in-interest, the MTC ruled that said assertion cannot hold water as the parcels of land subject matter of the deeds of sale presented by the petitioners were found to be different from the purported inheritance of the respondent. On top of the money judgment and the award of attorney's fees in favor of the respondent, the MTC ordered the petitioners to remove the improvements they introduced in the subject properties and to vacate the same.<sup>14</sup>

### **Ruling of the RTC**

The petitioners appealed to the RTC.<sup>15</sup> On June 30, 2009, the RTC rendered its Decision<sup>16</sup> setting aside the decision of the MTC. The RTC ordered the dismissal of the respondent's complaint on the following grounds: a) the complaint cannot give rise to an unlawful detainer action. The MTC ruling that the petitioners' possession of the properties was merely tolerated was misplaced as there was neither an express or implied contract among the parties;<sup>17</sup> b) the case could not likewise be one for forcible entry since there was no allegation that entry was committed by means of force, intimidation, strategy or stealth;<sup>18</sup> and c) since no date of entry was alleged by the respondent, the petitioners' contention that they have been in possession of the properties since 1989 to 1994 (*the period when the subject properties were allegedly conveyed to them by deeds of sale*), or for more than one year, was worthy of credence.<sup>19</sup> Even if the respondent was the true owner of the subject properties, he cannot avail of the summary action of ejectment considering that the possession thereof cannot be wrested from another who had been in the physical or material possession of the same for

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<sup>13</sup> Id. at 22; 101-102.

<sup>14</sup> Id. at 107.

<sup>15</sup> Id. at 108-109.

<sup>16</sup> Id. at 145-153.

<sup>17</sup> Id. at 150.

<sup>18</sup> Id.

<sup>19</sup> Id.

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more than one year.<sup>20</sup> Thus, the MTC should have dismissed the action for want of jurisdiction.<sup>21</sup>

### **Ruling of the CA**

The respondent elevated his case to the CA. On August 5, 2011, the CA rendered the assailed Decision<sup>22</sup> reversing and setting aside the decision of the RTC and reinstated the MTC judgment. Undaunted, the petitioners sought reconsideration which was denied by the CA in the Resolution<sup>23</sup> dated November 10, 2011.

Hence this petition.

According to the petitioners, the CA erred:

- a) in failing to consider the deeds of sale, project of partition and deed of waiver of rights which supports their claim of ownership and possession;
- b) in re-stating the respondent's allegation and concluding that their possession was by mere tolerance which is not based on the findings of facts and law; and
- c) in reinstating the findings of the MTC that there is no identity of the properties they are claiming and those alleged to be inherited by the respondent.<sup>24</sup>

### **Ruling of the Court**

The Court finds merit in the petition.

Plainly dubbed as one for ejectment, the respondent's complaint materially alleges the following:

3. [The respondent] is the son and only surviving legal heir of the late [Luz] who at the time of her death left two parcels of land located at Central West, Bauang, La Union which are particularly described as follows:

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<sup>20</sup> Id. at 151.

<sup>21</sup> Id.

<sup>22</sup> *Rollo*, pp. 38-49.

<sup>23</sup> Id. at 50.

<sup>24</sup> Id. at 15.

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1. *An orchard with an area of 179.67 sq.[m.], a residential lot with an area of 100 sq.m. and a commercial lot with an area of 166.67 sq.m., declared under ARP No. 001-01570;*
2. *An orchard with an area of 4,000 sq.m. and a residential lot with an area of 778 sq.m. declared under ARP No. 001-01574.*

X X X X

4. The above described properties are the shares of [the respondent's] mother [Luz] in the estate of the late [Urbano] and [Vicenta]. [Luz's] shares were duly adjudicated to her as per Decision in Civil Case No. 1151-Bg[,] entitled Beatriz R. Gapasin and Luz Florendo versus Jovencio Rosario, et al. for Revival of Judgment, copy of the said Decision is hereto attached as **Annex "C"**. [The respondent] is now the owner of the said properties having inherited the same from his mother [Luz];

5. **That [Rogelio,] without the knowledge and consent of [the respondent] and his late mother[,] had built a house and commercial stalls on the land covered by ARP No. 001-01570 (No. 1 above) and had the stalls leased to the damage and prejudice of the [respondent]. The other [petitioners] built their houses on the property covered by ARP No. 001-01574 (No. 2 above) without the knowledge and consent of the [respondent] and his late mother; [and]**

6. After the partition of the estate of Urbano and [Vicenta] and the foregoing shares were inherited by the [respondent], he demanded [the petitioners] to vacate his properties since he already needs the same for his personal use. [The petitioners] however unjustifiably refused and still refuse to leave the premises. Copies of demand letters sent to the [petitioners] are hereto attached as **Annex "D" and series[.]**<sup>25</sup> (Emphasis ours)

It is ruled that jurisdiction in ejectment cases is determined by the allegations of the complaint and the character of the relief sought. The complaint should embody such statement of facts as to bring the party clearly within the class of cases under Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended,<sup>26</sup> which states:

**SECTION 1. *Who may institute proceedings, and when.*** – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or 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 possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any

<sup>25</sup> Records, pp. 1-2.

<sup>26</sup> *Milagros Diaz, Eduardo Q. Catacutan, Dante Q. Catacutan, represented by their common Attorney-in-fact, Fernando Q. Catacutan v. Spouses Gaudencio Punzalan and Teresita Punzalan*, G.R. No. 203075, March 16, 2016.

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such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Ejectment or *accion interdictal* takes on two forms: forcible entry and unlawful detainer. In *Spouses Del Rosario v. Gerry Roxas Foundation, Inc.*,<sup>27</sup> the Court explained:

**Forcible entry and unlawful detainer** are two distinct causes of action defined in Section 1, Rule 70 of the Rules of Court. In forcible entry, one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the only issue is who has the prior possession *de facto*. In unlawful detainer, possession was originally lawful but became unlawful by the expiration or termination of the right to possess and the issue of rightful possession is the one decisive, for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.<sup>28</sup> (Emphasis and italics ours and underscoring in the original)

After a careful perusal of the complaint, the Court agrees with the RTC that the respondent's complaint is not constitutive of any of the forms of cases for ejectment.

The complaint cannot be considered as one for forcible entry. While the respondent averred that the petitioners' entry in the subject properties was made *without the knowledge and consent* of the respondent or his predecessor-in-interest which said allegation may amount to an averment of the employment of *stealth*,<sup>29</sup> there is, however, no showing that the action was filed within one year from the questioned entry. The complaint does not even state when the alleged dispossession began.

The respondent asserted that the petitioners entered the disputed properties even before said properties were adjudged as the share of the respondent's mother in the estate of the late Urbano and Vicenta. This was,

<sup>27</sup> 666 Phil. 410 (2011).

<sup>28</sup> Id. at 422, citing *Sumulong v. Court of Appeals*, G.R. No. 108817, May 10, 1994, 232 SCRA 372, 382-383.

<sup>29</sup> See *Zacarias v. Anacay*, G.R. No. 202354, September 24, 2014, 736 SCRA 508.

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in fact, admitted by the respondent in his Memorandum filed before the CA where he stated:

Even before actual partition, [Rogelio] had built a house and commercial stalls on the land covered by ARP No. 001-01570 (No. 1 above) and had the stalls leased. The other [petitioners] built their houses on the property covered by ARP No. 001-01574 (No. 2 above).

It was only after a Decision was rendered in Civil Case No. 1151-Bg for Revival of Judgment that there was actual partition of the estate x x x.<sup>30</sup>

Considering that the judgment in Civil Case No. 1151-Bg was rendered on August 23, 2001, and the instant case was instituted only on June 10, 2008, it clearly appears that the instant case was instituted long after the one year period for the institution of a case for forcible entry has lapsed.

Neither can the Court consider the complaint as one for unlawful detainer.

It has been held in a catena of cases<sup>31</sup> that in actions for *unlawful detainer*, a complaint sufficiently alleges said cause of action if it states the following elements, to wit: (1) initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and (4) within one year from the making of the last demand to vacate the property, the plaintiff instituted the complaint for ejectment.

Quite obviously, the first element is meant to present the basis of the lawful possession in the beginning which is either by virtue of a contract or by tolerance.

In the instant case, it is undisputed that no contract, express or implied existed between the parties. Apart from the MTC's conclusion that the petitioners' possession was by the mere tolerance of Luz and the respondent, there was however no evidence presented by the respondent to show such.

<sup>30</sup> CA rollo, p. 210.

<sup>31</sup> *Zacarias v. Anacay*, supra note 29; *Republic of the Philippines, et al. v. Sunvar Realty Development Corporation*, 688 Phil. 616 (2012); *Macaslang v. Spouses Zamora*, 664 Phil. 337 (2011).

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In the complaint, the respondent merely alleged that the petitioners, “without the knowledge and consent of [the respondent] and his late mother,” occup[ied] the subject property by building their respective houses and other improvements thereon.<sup>32</sup> Yet, the respondent failed to show how or why the petitioners’ possession can be considered as lawful at its inception (*but became illegal due to the expiration or termination of the right to possess*) to sufficiently establish an unlawful detainer case.

Reference to the notices/demands to vacate sent to the petitioners is also unavailing since there is nothing in the notices which shows that the petitioners’ possession was initially lawful. The notices to vacate only resonate the allegations made by the respondent in his complaint which commonly state as follows:

I am writing at the instance of my client Rizalito F. Alba who is the owner of the parcel of land where you had built your house at Central West, Bauang, La Union as per decision of the [RTC], Branch 67, Bauang, La Union in Civil Case 1151. The said decision had already become final and executory. My client now needs her [sic] lot which had deprived from her [sic] mother for so many years.

Demand is therefore made upon you to vacate the land within the period of thirty (30) days from receipt hereof. Your failure to do so shall constrain us to file the appropriate charges against you in court.

Please be guided accordingly.<sup>33</sup>

However, in spite of the respondent’s failure to cite and substantiate how the petitioners’ possession could be considered as lawful at its inception, the MTC ruled that the petitioners’ possession was by mere tolerance of Luz and the respondent, citing *Arcal v. CA*.<sup>34</sup> Thus:

**From the time that the [respondent] made demands to the [petitioners] to vacate the properties subject of this case and they refused to do so, their possession has already become unlawful.** The Supreme Court held in the case of *Arcal vs. Court of Appeals* (28 SCRA 34): “The possession by the defendants over the land has already become unlawful from the time that a demand to vacate was sent to them. Possession by tolerance is lawful, but such possession becomes unlawful upon demand to vacate made by the owner and the possessor by tolerance refuses to comply with such demand.” **Such is the case at bar.** x x x.<sup>35</sup> (Emphasis ours)

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<sup>32</sup> Records, p. 2.

<sup>33</sup> Id. at 10-17.

<sup>34</sup> 348 Phil. 813 (1998).

<sup>35</sup> Records, p. 107.

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The Court does not agree.

As the petitioners pointed out, it was only in the respondent's petition for review<sup>36</sup> filed before the CA where he asserted that the former's possession was by mere tolerance, viz:

After the actual partition however, [the petitioners'] possession of the subject properties was **tolerated by the [respondent] for a while**. [The respondent] first endeavored to have the properties be declared in the name of her [sic] mother and her siblings which was completed only sometime in the year 2006.

After the properties were finally declared in the name of [Luz], et. al, [the respondent], being the sole heir of [Luz], demanded [the petitioners] to vacate subject properties since he already needs the same for his personal use. x x x.<sup>37</sup> (Emphasis ours)

Unfortunately for the respondent, his statement only strengthens the contention that this is not an unlawful detainer case. Forsooth, said statement is an open admission that the alleged acts of tolerance by the respondent was exercised only after the actual partition of the estate of the late Urbano and Vicenta, or long after the petitioners have entered into their possession of the subject properties. The respondent alleged that the petitioners entered into the questioned possession without the knowledge and consent of Luz, and of himself; and that thereafter, he opted to tolerate said possession. This is not the "*tolerance*" which justifies an unlawful detainer case within the contemplation of the law.

The Court reiterates what has been held in *Zacarias v. Anacay*:<sup>38</sup>

In the instant case, the allegations in the complaint do not contain any averment of fact that would substantiate petitioners' claim that they permitted or tolerated the occupation of the property by respondents. **The complaint contains only bare allegations that "respondents without any color of title whatsoever occupies the land in question by building their house in the said land thereby depriving petitioners the possession thereof."** Nothing has been said on how respondents' entry was effected or how and when dispossession started. Admittedly, no express contract existed between the parties. This failure of petitioners to allege the key jurisdictional facts constitutive of unlawful detainer is fatal. Since the complaint did not satisfy the jurisdictional requirement of a valid cause for unlawful detainer, the [MTC] had no jurisdiction over the case. It is in this light that this Court finds that the [CA] correctly

<sup>36</sup> Id. at 263-278.

<sup>37</sup> Id. at 268.

<sup>38</sup> Supra note 29.

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found that the [MTC] had no jurisdiction over the complaint. x x x<sup>39</sup>  
(Emphasis ours and some emphasis in the original deleted)

Accordingly, the appellate court committed reversible error when it reinstated the MTC decision which took cognizance of the case, dealt upon its merits, and conducted summary proceedings as if the subject matter is, indeed, one of ejectment.

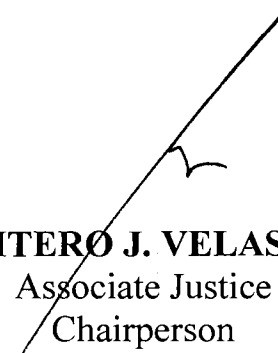
**WHEREFORE**, premises considered, the petition is **GRANTED**. The Decision dated August 5, 2011 and Resolution dated November 10, 2011 of the Court of Appeals in CA-G.R. SP No. 110189 are hereby **REVERSED AND SET ASIDE**. The Decision dated June 30, 2009 of the Regional Trial Court of Bauang, La Union, Branch 33, in Civil Case No. 1876-Bg, is **REINSTATED**.

**SO ORDERED.**




**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



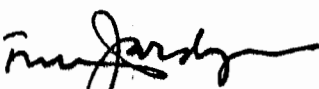
**DIOSDADO M. PERALTA**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice


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<sup>39</sup> Id. at 521, citing *Spouses Valdez, Jr. v. CA*, 523 Phil. 39, 50-51 (2006).

  
**FRANCIS H. JARDELEZA**  
Associate Justice

### ATTESTATION

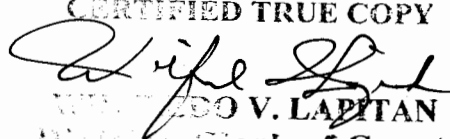
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify 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

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
Clerk of Court  
Third Division

JUN 14 2016