

FIRST DIVISION

[G.R. No. 127850, January 26, 1998]

MARIA ARCAL, JOSEFINA ARCAL, MARCIANA ARCAL, AND VIRGILIO ARCAL, PETITIONERS VS. COURT OF APPEALS, DANILO BUCAL, COSTAN & LETTY RICAFFRENTE, RENIE & CENY RICAFFRENTE, SANCHO & LANIE RICAFFRENTE, CORA GONEZ, SOLLY GONEZ, ENIE AND FLORIDA RICAFFRENTE, CARMEN TAMBOC, BOY AGUILAR, NORMING ARCAL, NORA AND ALEX BOCITA, ELVIE TAHIMIC, ANCHANG ARGUSON. IDRENG AND JULIA ARGUSON, LIZA ARGUSON, ACION ARGUSON, BALENG AND FELY ARGUSON, FIDENG AND CILENG MURANIA, ROSIE AND ALDO CALAGO, ENGAY AND SHIRLEY RICAFFRENTE, NENITA AND NARSING AGUILAR, ODIE DOZA, NENENG AND RAMON LUNGWAY, TISAY AND ABET DONES, YOLLY AND ED PAULINO, ERIC AND JENNIFER PAULINO, CHARLIE PANGANIBAN, DELIA AND PATRICIO BUEZA, ELLEN DUEZA, BERTING AND NORMA BUEZA, ALICE AND PILO RICAFFRENTE, DELLY AND FREDO NUNEZ, ANDRO AND ELLEN JIMENEZ, CRISELDA AND GORIO CLARETE, NENA VELASCO, DANNY CLARETE, ERLIN AND NONONG IBONG, CHITA AND RESTIE REYES, SONNY AND DONG REYES, AND WALLY AND DAISY REYES, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

This petition seeks the review of the decision of the Court of Appeals in CA-G.R SP No. 40824 dated November 15, 1996 and its Resolution dated January 13, 1997.

Petitioner as plaintiffs filed on August 31, 1995 a complaint for unlawful detainer docketed as Civil Case No. 370 before the Municipal Trial Court of Tanza, Cavite against private respondents as defendants. Subject of the complaint was a 21,435 square meter parcel of land designated as Lot No. 780 of Santa Cruz de Malabon Estate Subdivision, Cavite and covered by Transfer Certificate of Title No. 26277 in the names of Maria, Josefina, Marciana and Marcelina^[1] Arcal^[2].

The complaint alleged, among others, that:

5. Defendants herein occupied the subject parcel of land described above thru plaintiffs' implied tolerance, or permission but without contract with herein plaintiffs. From the dates of their occupancy, plaintiffs did not collect any single centavo from defendants, nor the latter pay to plaintiffs any rental for their occupancy therein;
6. On June 18, 1984, plaintiffs herein, except Virgilio Arcal, filed an ejectment suit against substantially all of defendants herein with the Municipal Trial Court

of Tanza, Cavite, docketed as Civil Case No. 285 covering the subject parcel of land in dispute:

7. Meanwhile, on September 18, [1984],[3] Lucio Arvisu the alleged son of Gaudencio Arvisu and Natalia Ricafrente Arvisu, and substantially all defendants herein filed with the Regional Trial Court, Branch 23, Trece Martires, Cavite, a civil case for 'Annulment of Title, with Reconveyance and Damages' against Salud Arcal Arbolante, Marcelina Arcal (deseased), Maria Arcal, Josefina Arcal and Marciana Arcal which was docketed as Civil Case No, TM-59. Defendants therein, plaintiffs herein, filed their Answer with Compulsory Counterclaim. On May 28, [1985],[4] the said complaint was ordered to be dismissed by the trial court for failure to prosecute. xxx An appeal was made to the Court promulgated on November 28, 1986, said appeal was considered abandoned and dismissed for failure of appellants to file their brief. xxx
8. Dissatisfied therefrom, on March 10, 1987, Lucio Ricafrente Arvisu, one of the plaintiffs in the immediately cited Civil Case No. TM-59, filed another case for 'Registration of Claim Under Section 8, RA26', entitled 'Lucio R. Arvisu vs. Marcelina Arcal (deseased), Maria Arcal, Josefina Arcal, Marciana Arcal and the Register of Deeds of Trece Martires City', docketed as Civil Case No. TM-146 before the Regional Trial Court of Branch 23, Trece Martires City. Private respondent therein filed a Motion to Dismiss basically on the ground of lack of cause of action and res adjudicata. In the Order of the trial court dated July 22, 1988, the complaint filed by Lucio Arvisu was dismissed though he thereafter filed an appeal with the Court of Appeals. xxx;
9. With regard to the ejectment suit filed by plaintiffs herein, except Virgilio Arcal, with the Municipal Trial Court of Tanza, Cavite, the said court rendered a favorable judgment in favor of plaintiffs ordering defendants therein among others, to vacate the property in question and remove residential houses and improvements introduced therein and return the possession thereof to plaintiffs. xxx Unfortunately on appeal with the RTC, Branch 23, Trece Martires City, by defendants therein, the foregoing decision was reversed and set aside, and the said complaint for ejectment was dismissed without prejudice to the filing of the proper action after the prejudicial question in Civil Case No. TM-146 is resolved in a fair and adversary proceeding. Said decision attained finality for failure of plaintiffs' former counsel to interpose an appeal. xxx;
10. Upon the other hand, the decision in Civil Case No. TM-146 which dismissed the petition of Lucio Arvisu was sustained by the Court of Appeals in its Decision promulgated on October 28, 1994. xxx;
11. Several demands were made by plaintiffs for defendants to vacate the premises in question, the last written demand was made by plaintiffs' lawyer on July 23, 1995, but they proved futile as they refused and failed, and still refuse and fail to vacate the premises, to the damage and prejudice of plaintiffs. xxx.

Private respondents failed to file their answer within the reglementary period, prompting petitioners to file a motion to render judgment. In a Decision dated October 26, 1995, the municipal trial court held that petitioners are registered

owners of the property and as much they have the right to enjoy possession thereof. The dispositive position of the decision reads:

Wherefore, finding the allegations of the plaintiffs to be with merits (sic), judgment is hereby rendered in favor of the plaintiffs ordering all the defendants xxx:

1. To vacate the property in question which they are occupying;
2. To remove their residential houses and improvement introduce(d) therein and return the possession of the lot to the plaintiff(s);
3. To pay the plaintiffs the sum of P200.00 as monthly rental for the use and occupying (sic) of the property from the date of the demand letter made by the plaintiff(s);
4. To pay plaintiffs the sum of P20,000.00 by way of attorneys fees and P3,000.00 as litigation expenses; and
5. Ordering the coat of suit.^[5]

On appeal, the Regional Trial Court of Cavite, Branch 23, affirmed in toto the municipal trial court's decision.^[6]

Private respondents filed a petition for review with the Court of Appeals, arguing *inter alia* that "the respondent trial court erred in not dismissing the case for lack of jurisdiction, the complaint being one for recovery of right of possession."^[7]

The appellate court, ruling in favor of private respondents, granted the petition, reserved and set aside the decision of trial court and dismissed Civil Case No. 370.^[8]

In considering that the complaint was not one for unlawful detainer, advertent that private respondents had previously filed complaints questioning petitioner's ownership of the land, the appellate court made the following disquisitions:

In commencing this suit for unlawful detainer private respondents are banking in their allegation that they merely tolerated petitioners to stay on the premises in question, but which tolerance they already withdrew on July 23, 1995. However, the other allegations and admissions of private respondents in their complaint would show that the case is not one of unlawful detainer as petitioners did not actually occupy the subject property upon the tolerance of private respondents.

First. Herein private respondents, as plaintiffs, filed on June 18, 1984 an ejectment suit against substantially all of herein petitioners, as defendants, also before the MTC of Tanza and this was docketed as Civil Case No. 285. In the case, it was the position of private respondents that for humanitarian consideration they tolerated petitioners to construct their respective houses on the subject premises sometime in 1974. However, this tolerance was withdrawn sometime in 1984 when demands to vacate were made on petitioners by private respondents before the

commencement of Civil Case No 285. Consequently, this present action for unlawful detainer based on the same theory of tolerance has no leg to stand on as in fact the supposed tolerance given by private respondents in 1974 was, as they themselves admit, already withdrawn way back in 1984.

Second. The MTC of Tanza decided Civil Case No. 285 in favor of private respondents. This decision was reversed however on appeal by the RTC of Trece Martires, Branch 23. The RTC's decision then gained finality for failure of private respondents to elevate the case to the property appellate court. Without passing upon the propriety of the decision of both the NTC and RTC in Civil Case No. 285, the admission by private respondents in that case that they withdrew sometime in 1984 the tolerance they supposedly extended to petitioners stands. That is, inasmuch as private respondents admit that they already made a demand to vacate upon petitioners in 1984, they are bound by this demand. And since they pursued this demand with the filing of Civil Case No. 285, no tolerance can be spoken of in this present case. Thus, the written demand to vacate of July 3, 1995 made by private respondents on petitioners did not terminate any right of the latter to stay on the subject premises supposedly founded on tolerance.

Third. As further alleged and admitted by private respondents in their complaint, a certain Lucio R. Arvisu and substantially all of the petitioners filed against them on September 18, 1984 an action for 'Annulment of Title, with Reconveyance and Damages' before the RTC of Trece Martires, Branch 23, docketed therein as Civil Case No. TM-59. Although that case was later dismissed for failure to prosecute, there is no question that its institution constituted an open challenge to the title of private respondents over the premises in dispute. In effect, petitioners never really recognized private respondents as owners thereof. With this position of petitioners which private respondents became aware of with the filing of Civil Case No. TM-59, the former can hardly be considered to have occupied the subject premises by mere tolerance of the latter.

Fourth. On March 10, 1987, Lucio R. Arvisu again commenced a suit for 'Registration of Claim Under Section 8, R.A. 26' also before the RTC of Trece Martires City, Branch 23, docketed as Civil Case No. TM-146. Albeit dismissed later, this case also served as an opposition to private respondents' title over the subject property. Thus, like Civil No. Tm-59, Civil Case No. TM-146 also destroys private respondents' theory of tolerated possession.

We are therefore convinced that the allegations of private respondents in their own complaint do not sufficiently support an action for unlawful detainer. True, the records will show that they are the registered owners of the property in dispute. As much, they have the preferential right to be the possessors thereof. But for this right to be enforced and respected, they will have to avail of the proper remedy provided for by law and the rules.^[9]

Hence this petition, where petitioners assigns to the appellate court the following error:

RESPONDENT COURT OF APPEALS ERRED IN FINDING THAT THE COMPLAINT FILED BEFORE THE MUNICIPAL TRIAL COURT OF TANZA, CAVITE, DOES NOT CONSTITUTE AN UNLAWFUL DETAINER SUIT, AND IN DISMISSING THE SAME FOR LACK OF JURISDICTION.^[10]

We grant the petition.

The jurisdiction of the court, as well as the nature of the action, are determined by the averment in the complaint.^[11] We examine the allegations of the complaint filed by petitioners before the municipal trial court.

To give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint should embody such statement of facts as brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol testimony.^[12]

From a reading of the allegations of the complaint quoted above, we find that the action is one for unlawful detainer.

Petitioners alleged in their complaint that they are the registered owners of the subject property. The cases filed by certain Lucio Arvisu and several of the private respondents casting doubt on petitioners' ownership of the property, namely Civil Case No. TM-59 for 'Annulment of Title, with Reconveyance and Damages' and Civil Case No. TM-146 for 'Registration of Claim Under Section 8, R.A No. 26', were resolved with finality adverse to private respondents.^[13]

Petitioners also alleged in the complaint that the possession of the property by private respondents was with petitioners' tolerance,^[14] and that they (petitioners) had served written demands upon private respondents, the latest demand being on July 23, 1995, but that private respondents refused to vacate the property.^[15]

The appellate court, however, made the conclusion that from the allegations in the complaint, it can be gleaned that private respondents "did not actually occupy the subject property upon the tolerance of [petitioners]",^[16] as tolerance was withdrawn sometime in 1984 when demands to vacate were made on private respondents prior to the commencement of Civil Case No. 285; therefore, unlawful detainer is not the proper remedy.

We disagree with the appellate court.

The rule is that 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.^[17] A person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which, a summary action for ejectment is the proper remedy against him. The