

## **SECOND DIVISION**

**[ CA-G.R. SP No. 135624, November 13, 2014 ]**

**INTESTATE ESTATE OF MANUEL S. GUERRERO, REPRESENTED BY  
ITS ADMINISTRATOR GUILLERMO T. GUERRERO, PETITIONER,  
VS. JUN TAKATA A.K.A JUN TACATA AND ALL PERSONS  
CLAIMING RIGHTS UNDER HIM, RESPONDENTS.**

### **D E C I S I O N**

**GARCIA, R.R., J.:**

Before Us is a Petition for Review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated September 12, 2013 of the Regional Trial Court (RTC), Branch 258, Parañaque City which affirmed the Decision<sup>[3]</sup> dated October 23, 2012 of the Metropolitan Trial Court (MeTC), Branch 77, Parañaque City dismissing the unlawful detainer case filed by petitioner Intestate Estate of Manuel S. Guerrero, represented by its administrator<sup>[4]</sup> Guillermo T. Guerrero, against respondent Jun Takata a.k.a Jun Tacata and all persons claiming rights under him.

### **THE FACTS**

The instant case stemmed from a complaint<sup>[5]</sup> for unlawful detainer filed on March 29, 2012 by petitioner against respondent before the MeTC of Parañaque City.

Petitioner, represented by its administrator Guillermo T. Guerrero, alleged in its complaint that it is the registered owner of two (2) adjacent parcels of land located at San Antonio Valley II each measuring 1,749 sq. mts. and covered by Transfer Certificate of Title (TCT) Nos. T-130449<sup>[6]</sup> (Lot 3695-A) and T-130515<sup>[7]</sup> (3695-K) under the name Intestate Estate of Manuel S. Guerrero. The property has a verified and approved plan by the Land and Management Bureau as early as 1996. Respondent Jun Takata a.k.a Jun Tacata is occupying portions of the said land by mere tolerance of petitioner for several years. He has fenced the property, constructed a small hut and placed small cages to house his chickens and roosters as shown by the pictures<sup>[8]</sup> taken thereat. His stay, however, is with the understanding that he would demolish the structures and leave the premises upon demand. Since petitioner already needs the property for its own use, the estate's administrator wrote a demand letter<sup>[9]</sup> dated October 27, 2011 to respondent giving him fifteen (15) days upon receipt thereof to vacate the premises. Respondent received the letter but refused to sign the same. Petitioner caused Geodetic Engineer Rommel Bautista to determine the exact area of respondent's encroachment and came up with a certification<sup>[10]</sup> and relocation plan<sup>[11]</sup> which both state that respondent is occupying a total area of 337 sq. mts. Hence, petitioner prayed that respondent and all persons claiming rights under him to peacefully vacate and turn over the possession of the subject premises to the

Intestate Estate of Manuel S. Guerrero; to demolish all the illegal constructions respondent erected in the said premises; and to pay P5,000.00 a month as reasonable compensation for the use of the lot until the same is vacated plus P50,000.00 as attorney's fees.

In an Answer<sup>[12]</sup> filed on May 7, 2012, respondent claims that petitioner has no cause of action against him because it is not the owner of the alleged encroached lot. His spouse Tessie C. Guillermo owns the three (3) parcels of land being occupied by them, although two (2) of the said titles are still in the names of BPI Leasing Corporation and San Antonio Development Corporation. The technical description of the three (3) titles and the Subdivision Survey for San Antonio Valley II secured from the Land Registration Authority would readily show the existence of a creek beside the three (3) lots owned by respondent and his wife. Since 1980, they have been living in the aforesaid address. They later fenced the dried creek which is the property being claimed by petitioner. Respondent also attached a certified true copy of the surveyor's certificate showing that there is indeed a creek six (6) meters width along his property. The certificate was taken from the application for registration by the former owner, Filomena Pagsisihan, of the 38,941 sq. mts. now San Antonio Valley No. II. As counterclaim, respondent prayed that petitioner be ordered to pay him P200,000.00 as moral damages, P100,000.00 as exemplary damages and P50,000.00 as attorney's fees.

On the basis of the position papers and documentary evidence adduced by the parties, the MeTC rendered a Decision<sup>[13]</sup> dated October 23, 2012 dismissing the unlawful detainer case filed by petitioner. It ratiocinated that the complaint failed to recite any averments of fact that would substantiate the claim that petitioner tolerated respondent's occupation over the property for several years. To justify an action for unlawful detainer, it is essential that petitioner's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. There was also no evidence adduced that the property occupied by respondent was the one referred to by petitioner in its complaint. The pertinent portions of the MeTC's decision are quoted:

x x x

In the instant case, the evidence adduced by the plaintiff failed to muster the required quantum to establish its cause of action against the defendant.

It must be noted that in its complaint, plaintiff alleged among others that as owners of the two parcels of lot in question, it tolerated defendant's stay thereon for several years now with the understanding that defendant would demolish the structures he erected thereon and leave the premises upon demand. x x x.

However, plaintiff did not offer any evidence towards such end. Although it presented an affidavit of Engineer Rommel Bautista to show in essence that a survey was conducted on the disputed lots showing some encroachments on the disputed lots and structures or shanties erected thereon (See Exh. I-2) and another one executed by Leo D. Santos on plaintiff's giving of a demand letter to the defendant before this case was

filed, no other affidavit of a witness was adduced from among its Exhibits presented, x x x to establish such tolerance of defendant's stay thereon.

Even assuming that there exists sufficient evidence of such tolerance, the complaint must still fail as no evidence was adduced that indeed the property occupied by the defendant was the one referred to by plaintiff in its complaint.

While the title/s presented by the plaintiff as well as the relocation survey show that the plaintiff is the owner of the properties appearing thereat and the metes and bounds thereof respectively, no evidence was likewise adduced to show that the actual areas being claimed by plaintiff are the same as that allegedly encroached by the defendant. The evidence is bereft of any affidavit executed to prove such end. Even the Certification submitted by the said surveyor and the duplicate original copy of the Relocation Survey (Exh. J) failed to indicate any reference at all to defendant's alleged encroachment on plaintiff's properties except that it merely mentioned that shanties were found therein. This appears to be insufficient as the burden lies with the plaintiff to establish its cause of action against the defendant. Verily, as the evidence failed to preponderate in plaintiff's favor, the instant action must fail.

Aggrieved, petitioner appealed to the RTC which, in a Decision<sup>[14]</sup> dated September 12, 2013, affirmed the decision of the MeTC ruling that petitioner failed to substantiate its allegation that it tolerated respondent's physical possession over the subject property.

Petitioner's motion for reconsideration was likewise denied in an Order<sup>[15]</sup> dated April 30, 2014.

Hence, the instant Petition for Review in which petitioner raised the following assignment of errors<sup>[16]</sup>, to wit:

I

THE COURT A *QUO* ERRED IN DISMISSING THE COMPLAINT FOR UNLAWFUL DETAINER FOR LACK OF JURISDICTION.

II

THE COURT A *QUO* ERRED IN HOLDING THAT PETITIONER DID NOT OFFER EVIDENCE IN SUPPORT OF RESPONDENT'S POSSESSION BY TOLERANCE.

**THE ISSUE**

The primordial issue for resolution is whether or not the court *a quo* erred in affirming the decision of the MeTC dismissing the complaint for unlawful detainer

filed by petitioner against respondent for occupying a total of 337 sq. mts. of the subject property.

## **THE RULING**

The petition is meritorious.

Petitioner contends the requirement that the complaint should allege as jurisdictional facts, when and how the entry into the property was made, applies only when the issue is the timeliness of the filing of the complaint. However, this is not the issue in this case. His complaint and position paper explicitly mentioned that respondent's stay for several years was by mere tolerance with the understanding that he would demolish the structures upon demand. Clearly, the allegations in the complaint are enough for the MeTC to acquire jurisdiction over it.

We agree with petitioner.

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. An unlawful detainer proceeding is summary in nature, jurisdiction of which lies in the proper municipal trial court or metropolitan trial court. The action must be brought within one year from the date of last demand and the issue in said case is the right to physical possession.<sup>[17]</sup>

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following:

- (1) Initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
- (2) Eventually, such possession became illegal upon notice by plaintiff to 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 the enjoyment thereof; and
- (4) Within one year from the last demand on defendant.

Well-settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring 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 evidence.<sup>[18]</sup>

In the instant case, petitioner's allegations in the complaint clearly makes out a case for unlawful detainer essential to confer jurisdiction over the subject matter on the MeTC. The pertinent portions of petitioner's complaint are quoted:

## C O M P L A I N T

X X X

3. The **plaintiff is the registered owner** of two (2) parcel of lot located at San Antonio Valley 1 measuring 1,749 square meters each lot and covered by Transfer Certificate Title Nos. T-130449 and T-130515 which have a verified and approved plan by the Land Management Bureau as early as 1996. Certified true copies of said titles are hereto attached as Annexes "B" and "C" and the certified true copy and clearer Xerox copy of verified/approved plan as Annex "D" and "D-1".
4. The **defendant is occupying portions of said parcels of land** by fencing it, constructing a small hut and placing small cages to house his chickens and roosters and has been using and staying there for several years **by mere tolerance of herein plaintiff with the understanding that he would demolish the structures and leave the foregoing premises upon demand of the plaintiff.** Pictures of the defendant's structures consisting of a fence, small hut and cages for his chickens/roosters are hereto attached as Annexes "E", "F" and "G";
5. Since the plaintiff needs the property for its own use, the Plaintiff wrote a **demand letter dated October 27, 2011** to the Defendant Jun Takata, giving said defendant fifteen (15) days upon receipt of the letter to vacate the premises which was received by the Defendant on the same date but he refused to sign the same. Photocopy of the Demand Letter is hereto attached as Annex "H";
6. Plaintiff has caused Surveyor Engineer Rommel Bautista to determine the exact area of defendant's encroachment and came up with a **certification and relocation plan which states that defendant is occupying a total area of Three Hundred Thirty Seven (337) square meters.** Said certification and relocation plan are hereto attached as Annexes "I", "I-1" and "J"; (*Emphasis supplied*)

As above mentioned, petitioner alleged that it is the owner of the two (2) parcels of lot where respondent is occupying portions thereof; that respondent is using and staying therein for several years by mere tolerance of herein petitioner with the understanding that he would demolish the structures and leave the premises upon demand of petitioner; petitioner, through its administrator, sent a demand letter dated October 27, 2011 to respondent giving him fifteen (15) days upon receipt thereof to vacate the premises, but he refused to do so. The complaint was filed on March 29, 2012 or within one year from the time the last demand to vacate was