

## THIRD DIVISION

[ G.R. No. 211539, October 17, 2016 ]

**THAMERLANE M. PEREZ, PETITIONER, VS. DOMINADOR  
PRISCILLA RASACEÑA, NAVARRO AND ADELFA LIM,  
RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

For this Court's Resolution is a Petition for Review on *Certiorari* filed by petitioner Thamerlane M. Perez assailing the Decision<sup>[1]</sup> dated July 29, 2013 and Resolution<sup>[2]</sup> dated March 4, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 124234. The CA reversed the Decision<sup>[3]</sup> dated September 30, 2011 of the Regional Trial Court (RTC) of Manila, Branch 42, in Civil Case No. 11-125644, which affirmed the April 13, 2011 Metropolitan Trial Court (*MeTC*) Decision.<sup>[4]</sup>

The factual and procedural antecedents follow.

The dispute centers on the right of possession of the subject property denominated as Lot 28, Block No. 2 located at 800 Loyola' Street corner San Diego Street, Sampaloc, Manila, with a total area of 187.50 square meters, more or less, covered by Transfer Certificate of Title (*TCT*) No. 284213 registered under the name of LNC 3 Asset Management, Inc. (*LNC*).

On August 18, 2010, petitioner filed a Complaint<sup>[5]</sup> for unlawful detainer before the *MeTC* of Manila, Branch 11 against respondents Dominador Rasacefia, Priscilla Navarro, and Adelfa Lim. He alleged that he is the absolute owner of the property in controversy. He acquired the property from LNC through a Deed of Conditional Sale dated January 13, 2010 and, subsequently, through a Deed of Absolute Sale dated July 29, 2010. The previous owner, LNC, tolerated respondents' occupancy of the subject property.

In a letter dated April 19, 2010, petitioner, through his counsel demanded respondents to vacate the property, but the latter refused to heed. At the proceedings initiated by petitioner before the *Lupong Tagapamayapa of Barangay* 521, Manila, the parties failed to settle amicably. Hence, the complaint, praying that respondents be ordered to vacate the premises and restore the possession of the property to the petitioner; to pay a reasonable rent in the amount of P30,000.00 for the use and occupation of the same; and, to pay P100,000.00 as moral damages, P30,000.00 as attorney's fees and costs.

In their Answer with Counterclaim,<sup>[6]</sup> respondents alleged that they leased the property from Agus Development Corporation (*Agus*). They contended that: the court has no jurisdiction over the person of the respondents; the case is barred by

prior judgment or *res judicata*; there is no lessor-lessee relationship between the parties; petitioner has no cause of action against respondents; and the condition precedent for the filing of the complaint was not complied with as there was no demand to vacate.

In a Decision dated April 13, 2011, the MeTC ruled in favor of petitioner, with the following dispositive portion:

WHEREFORE, judgment is hereby rendered in favor of [petitioner] and against the [respondents]. The court orders the [respondents]:

1. To immediately vacate and peacefully surrender the possession of the occupied subject premises located at 800 Loyola corner San Diego Streets, Sampaloc, Manila;
2. To pay the [petitioner] [P]5,000.00 as reasonable monthly compensation for the use and occupancy of the premises beginning April 2010 and every month thereafter until [respondents] shall have finally and actually vacated the subject premises;
3. To pay the amount of [P]10,000.00 as and for attorney's fees;
4. To pay the costs of the suit.

SO ORDERED.<sup>[7]</sup>

Thereafter, respondents elevated the case before the RTC of Manila. On September 30, 2011, the RTC affirmed *in toto* the Decision of the MeTC.

Aggrieved, respondents filed a petition for review before the CA. The CA reversed and set aside the decision of the RTC. Petitioner failed to prove that his predecessor-in-interest tolerated respondents' possession of the property. He did not offer any evidence attesting that LNC tolerated the occupation. His complaint was silent as to the factual circumstances surrounding the alleged tolerance, or averment of an overt act indicative of LNC's permission. The CA considered the Deed of Absolute Sale from which petitioner anchors his right of possession highly dubious and questionable because: the same was not registered with the proper Registry of Deeds; no affidavit of the lawyer who notarized the same was submitted; and there was no proof of authority of the persons who signed in the contract for LNC. The *fallo* of the decision reads:

WHEREFORE, premises considered, the petition is GRANTED. The September 30, 2011 Decision and the February 24, 2012 Omnibus Order of the Regional Trial Court of Manila, Branch 42 in Civil Case No. 11-125644 are REVERSED and SET ASIDE. Civil Case No. 187245-CV for unlawful detainer filed by Thamerlane M. Perez against Dominador Rasaceña, Priscilla Navarro and Adelfa Lim before the Metropolitan Trial Court, Branch 11 of Manila is hereby DISMISSED.

SO ORDERED.<sup>[8]</sup>

On March 4, 2014, the CA denied the motion for reconsideration filed by petitioner.<sup>[9]</sup>

Hence, the instant petition, raising the following issues:

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, GRAVELY ERRED IN RULING THAT PETITIONER FAILED TO ALLEGE AND PROVE THAT RESPONDENTS['] POSSESSION WAS BY MERE TOLERANCE OF HIS PREDECESSORS-IN-INTEREST.

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, GRAVELY ERRED IN RULING THAT THE DEED OF ABSOLUTE SALE OF THE PETITIONER IS HIGHLY DUBIOUS AND QUESTIONABLE CONSIDERING THAT THE SAME WAS NOT REGISTERED WITH THE PROPER REGISTRY OF DEEDS; NO AFFIDAVIT BY THE LAWYER WHO NOTARIZED THE SAME WAS SUBMITTED AND NO PROOF WAS SHOWN THAT THE PERSONS WHO SIGNED FOR THE REGISTERED OWNER, LNC ASSET MANAGEMENT, INC., WERE AUTHORIZED TO DO SO.<sup>[10]</sup>

To begin with, in summary ejectment suits such as unlawful detainer and forcible entry, the only issue to be determined is who between the contending parties has better possession of the contested property. The Municipal Trial Courts, Metropolitan Trial Courts in Cities, and the Municipal Circuit Trial Courts exercise exclusive original jurisdiction over these cases and the proceedings are governed by the Rules on Summary Procedure.<sup>[11]</sup> The summary character of the proceedings is designed to quicken the determination of possession *de facto* in the interest of preserving the peace of the community, but the summary proceedings may not be proper to resolve ownership of the property. Consequently, any issue on ownership arising in forcible entry or unlawful detainer is resolved only provisionally for the purpose of determining the principal issue of possession.<sup>[12]</sup>

We note that the arguments raised here would necessarily require a re-evaluation of the parties' submissions and the CA's factual findings. Ordinarily, this course of action is proscribed in a petition for review on *certiorari*, *i.e.*, a Rule 45 petition resolves only questions of law. By way of exception, however, the Court resolves factual issues when the findings of the MTCC and the RTC differ from those of the CA, as in the case at bar.<sup>[13]</sup>

Petitioner averred that he sufficiently alleged in his Complaint and established that respondents' possession of the subject property is by mere tolerance of his predecessor-in-interest. That LNC has allowed several years to pass without requiring respondents to vacate the premises nor filed an ejectment case against them supports the fact that LNC has acquiesced to respondents' possession and use of the property.

It is settled that a complaint sufficiently alleges a cause of action for unlawful detainer if it states the following:

- (a) Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;
- (b) Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession;
- (c) Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and
- (d) Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment.<sup>[14]</sup>

A review of petitioner's complaint shows that: (a) by tolerance of the previous owner, LNC, respondents were allowed to occupy the property on the promise to vacate upon demand; (b) in a letter dated April 19, 2010, petitioner demanded the respondents to vacate the property; (c) the respondents refused to vacate; (d) petitioner filed the complaint on August 18, 2010 or within one year from the formal demand to vacate was made. Clearly, the Complaint established a case for unlawful detainer as to vest the MeTC jurisdiction over it.

Case law introduced the concept of possession by tolerance in ejectment cases as follows upon failure of the tenant to pay the stipulated rents, the landlord might consider the contract broken and demand immediate possession of the rented property, thus, converting a legal possession into illegal possession. However, the landlord might choose to give the tenant credit for the payment of the rents and allow him to continue indefinitely in the possession of the property, such that during that period, the tenant would not be in illegal possession of the property and the landlord could not maintain an action of *desahucio* until after the latter had taken steps to convert the legal possession into illegal possession. <sup>[15]</sup>

As held in *Canaynay v. Sarmiento*: <sup>[16]</sup>

x x x There is no legal obstacle for the owner to allow a defaulting tenant to remain in the rented property one month, one year, several years, or even decades. That consent, no matter how long it may last, makes lawful tenant's possession. Only when that consent is withdrawn and the owner demands tenant to leave the property is the owner's right of possession asserted and the tenant's refusal or failure to move out makes his possession unlawful, because it is violative of the owner's preferential right of possession. <sup>[17]</sup>

We further elucidated the concept of possession by mere tolerance in *Calubayan, et*

*al. v. Pascual*,<sup>[18]</sup> thus:

x x x **In allowing several years to pass without requiring the occupant to vacate the premises nor filing action to eject him, plaintiffs have acquiesced to defendant's possession and use of the premises.** It has been held that 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 them. x x x.

x x x x

Even assuming, for the sake of argument, that the various notifications for defendant to see the plaintiffs could be construed as demands upon the defendant to vacate, **the length of time that defendant detained the premises is to be reckoned with from the date of the last demand. Plaintiffs' failure to file an action in court shortly after defendant had ignored their previous notices is to be considered as a waiver on their part to eject the defendant in the meantime.**

x x x.<sup>[19]</sup>

A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. To show that the possession was initially lawful, the basis of such lawful possession must then be established. Acts of tolerance must be proved showing the overt acts indicative of his or his predecessor's tolerance or permission for him to occupy the disputed property.<sup>[20]</sup>

To establish the tolerance on the part of petitioner's predecessor, petitioner presented a letter 21 dated October 15, 2002 wherein Agus apprised one Isidra Millanes, who was a lessee on a month-to-month basis, the transfer of ownership of Lot No. 28, Block No. 2 at 800 Loyola Street corner San Diego Street, Sampaloc, Manila to Metropolitan Bank and Trust Company (*Metrobank*); and a letter dated March 25, 2004, wherein Metrobank, through its counsel, demanded the spouses Ricardo and Precilla<sup>[22]</sup> Navarro and all persons claiming title or rights under him to vacate the premises and pay rental in arrears.<sup>[23]</sup>

Respondents, as lessees of Agus and then Metrobank, were the legal possessors of the subject property by virtue of a contract of lease. Metrobank's failure to file an action in court shortly after respondents failed to heed to its demand to vacate in 2004 was a waiver on its part to eject respondents in the meantime. It would appear that Metrobank permitted or tolerated respondents' possession of the property even before LNC acquired the property and eventually sold the same to petitioner. It can be surmised that LNC maintained the *status quo*. Otherwise, petitioner would not have found respondents on the premises. Hence, petitioner was able to establish that respondents' possession was by tolerance of his predecessors. As such, they are necessarily bound by an implied promise that they will vacate