

THIRD DIVISION

[G.R. Nos. 154391-92, September 30, 2004]

**SPOUSES ISMAEL AND TERESITA MACASAET, PETITIONERS, VS.
SPOUSES VICENTE AND ROSARIO MACASAET, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

The present case involves a dispute between parents and children. The children were invited by the parents to occupy the latter's two lots, out of parental love and a desire to foster family solidarity. Unfortunately, an unresolved conflict terminated this situation. Out of pique, the parents asked them to vacate the premises. Thus, the children lost their right to remain on the property. They have the right, however, to be indemnified for the useful improvements that they constructed thereon in good faith and with the consent of the parents. In short, Article 448 of the Civil Code applies.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the March 22, 2002 Decision^[2] and the June 26, 2002 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP Nos. 56205 & 56467. The challenged Decision disposed as follows:

"WHEREFORE, the assailed Decision is **AFFIRMED** with the following **MODIFICATIONS**:

'1. Vicente and Rosario should reimburse Ismael and Teresita one-half of the value of the useful improvements introduced in the premises prior to demand, which is equivalent to P475,000.00. In case the former refuse to reimburse the said amount, the latter may remove the improvements, even though the land may suffer damage thereby. They shall not, however, cause any more impairment upon the property leased than is necessary.

'2. The award of attorney's fees is **DELETED**.

'3. The records of these consolidated cases are **REMANDED** to the Court of origin for further proceedings to determine the option to be taken by Vicente and Rosario and to implement the same with dispatch."^[4]

The assailed Resolution denied petitioners' Motion for Reconsideration.

The Facts

Petitioners Ismael and Teresita^[5] Macasaet and Respondents Vicente and Rosario Macasaet are first-degree relatives. Ismael is the son of respondents, and Teresita is his wife.^[6]

On December 10, 1997, the parents filed with the Municipal Trial Court in Cities (MTCC) of Lipa City an ejectment suit against the children.^[7] Respondents alleged that they were the owners of two (2) parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-78521 and T-103141, situated at Banay-banay, Lipa City; that by way of a verbal lease agreement, Ismael and Teresita occupied these lots in March 1992 and used them as their residence and the situs of their construction business; and that despite repeated demands, petitioners failed to pay the agreed rental of P500 per week.^[8]

Ismael and Teresita denied the existence of any verbal lease agreement. They claimed that respondents had invited them to construct their residence and business on the subject lots in order that they could all live near one other, employ Marivic (the sister of Ismael), and help in resolving the problems of the family.^[9] They added that it was the policy of respondents to allot the land they owned as an advance grant of inheritance in favor of their children. Thus, they contended that the lot covered by TCT No. T-103141 had been allotted to Ismael as advance inheritance. On the other hand, the lot covered by TCT No. T-78521 was allegedly given to petitioners as payment for construction materials used in the renovation of respondents' house.^[10]

The MTCC^[11] ruled in favor of respondents and ordered petitioners to vacate the premises. It opined that Ismael and Teresita had occupied the lots, not by virtue of a verbal lease agreement, but by tolerance of Vicente and Rosario.^[12] As their stay was by mere tolerance, petitioners were necessarily bound by an implied promise to vacate the lots upon demand.^[13] The MTCC dismissed their contention that one lot had been allotted as an advance inheritance, on the ground that successional rights were inchoate. Moreover, it disbelieved petitioners' allegation that the other parcel had been given as payment for construction materials.^[14]

On appeal, the regional trial court^[15] (RTC) upheld the findings of the MTCC. However, the RTC allowed respondents to appropriate the building and other improvements introduced by petitioners, after payment of the indemnity provided for by Article 448 in relation to Articles 546 and 548 of the Civil Code.^[16] It added that respondents could oblige petitioners to purchase the land, unless its value was considerably more than the building. In the latter situation, petitioners should pay rent if respondents would not choose to appropriate the building.^[17]

Upon denial of their individual Motions for Reconsideration, the parties filed with the CA separate Petitions for Review, which were later consolidated.^[18]

Ruling of the Court of Appeals

The CA sustained the finding of the two lower courts that Ismael and Teresita had been occupying the subject lots only by the tolerance of Vicente and Rosario.^[19]

Thus, possession of the subject lots by petitioners became illegal upon their receipt of respondents' letter to vacate it.^[20]

Citing *Calubayan v. Pascual*,^[21] the CA further ruled that petitioners' status was analogous to that of a lessee or a tenant whose term of lease had expired, but whose occupancy continued by tolerance of the owner.^[22] Consequently, in ascertaining the right of petitioners to be reimbursed for the improvements they had introduced on respondents' properties,^[23] the appellate court applied the Civil Code's provisions on lease. The CA modified the RTC Decision by declaring that Article 448 of the Civil Code was inapplicable. The CA opined that under Article 1678 of the same Code, Ismael and Teresita had the right to be reimbursed for one half of the value of the improvements made.^[24]

Not satisfied with the CA's ruling, petitioners brought this recourse to this Court.^[25]

The Issues

Petitioners raise the following issues for our consideration:

"1. a) Whether or not Section 17[,] Rule 70 of the Rules of Court on Judgment should apply in the rendition of the decision in this case;

b) Whether or not the Complaint should have been dismissed;

c) Whether or not damages including attorney's fees should have been awarded to herein petitioners;

"2. a) Whether or not the rule on appearance of parties during the Pretrial should apply on appearance of parties during Preliminary Conference in an unlawful detainer suit;

b) Whether or not the case of *Philippine Pryce Assurance Corporation vs. Court of Appeals* (230 SCRA 164) is applicable to appearance of parties in an unlawful detainer suit;

"3. Whether or not Article 1678 of the Civil Code should apply to the case on the matters of improvements, or is it Article 447 of the Civil Code in relation to the Article 453 and 454 thereof that should apply, if ever to apply the Civil Code;

"4. Whether or not the [D]ecision of the Court of Appeals is supported by evidence, appropriate laws, rules and jurisprudence;

"5. Whether or not Assisting Judge Norberto Mercado of the MTCC Lipa City should be held accountable in rendering the MTCC [D]ecision;

"6. Whether or not Atty. Glenn Mendoza and Atty. Andrew Linatoc of the same [l]aw office should be held accountable for pursuing the [e]jectment case[.]"^[26]

The Court's Ruling

The Petition is partly meritorious.

First Issue:
Ejectment

Who is entitled to the physical or material possession of the premises? At the outset, we stress that this is the main issue in ejectment proceedings.^[27] In the present case, petitioners failed to justify their right to retain possession of the subject lots, which respondents own. Since possession is one of the attributes of ownership,^[28] respondents clearly are entitled to physical or material possession.

Allegations of the Complaint

Petitioners allege that they cannot be ejected from the lots, because respondents based their Complaint regarding the nonpayment of rentals on a verbal lease agreement, which the latter failed to prove.^[29] Petitioners contend that the lower courts erred in using another ground (tolerance of possession) to eject them.

In actions for unlawful detainer, possession that was originally lawful becomes unlawful upon the expiration or termination of the defendant's right to possess, arising from an express or implied contract.^[30] In other words, the plaintiff's cause of action comes from the expiration or termination of the defendant's right to continue possession.^[31] The case resulting therefrom must be filed within one year from the date of the last demand.

To show a cause of action in an unlawful detainer, an allegation that the defendant is illegally withholding possession from the plaintiff is sufficient. The complaint may lie even if it does not employ the terminology of the law, provided the said pleading is couched in a language adequately stating that the withholding of possession or the refusal to vacate has become unlawful.^[32] It is equally settled that the jurisdiction of the court, as well as the nature of the action, is determined from the averments of the complaint.^[33]

In the present case, the Complaint alleged that despite demands, petitioners "refused to pay the accrued rentals and [to] vacate the leased premises."^[34] It prayed that judgment be rendered "[o]rdering [petitioners] and all those claiming rights under them to vacate the properties x x x and remove the structures x x x constructed thereon."^[35] Effectively then, respondents averred that petitioners' original lawful occupation of the subject lots had become unlawful.

The MTCC found sufficient cause to eject petitioners. While it disbelieved the existence of a verbal lease agreement, it nevertheless concluded that petitioners' occupation of the subject lots was by mere tolerance of respondents. Basing its conclusion on the fact that the parties were close relatives, the MTCC ruled thus:

"x x x [T]he parties herein are first degree relatives. Because of this relationship, this Court takes judicial notice of the love, care, concern and protection imbued upon the parents towards their [children], i.e., in the instant case, the love, care, concern and protection of the [respondents]

to the [petitioners]. With this in mind, this Court is inclined to believe the position of the [petitioners] that there was no such verbal lease agreement between the parties herein that took place in 1992. x x x.

"From the allegations of the [petitioners], this Court is convinced that their stay and occupancy of the subject premises was by mere tolerance of the [respondents], and not by virtue of a verbal lease agreement between them."^[36]

Having found a cause of action for unlawful detainer, the MTCC (as well as the RTC and the CA) did not err in ordering the ejectment of petitioners as prayed for by respondents. There was no violation of Section 17 of Rule 70^[37] of the Rules of Court. As earlier explained, unlawful detainer was sufficiently alleged in the Complaint and duly proven during the trial. Significantly, the issue of whether there was enough ground to eject petitioners was raised during the preliminary conference.^[38]

Not Merely Tolerated Possession

Petitioners dispute the lower courts' finding that they occupied the subject lots on the basis of mere tolerance. They argue that their occupation was not under such condition, since respondents had invited, offered and persuaded them to use those properties.^[39]

This Court has consistently held that those who occupy the land of another at the latter's tolerance or permission, without any contract between them, are necessarily bound by an implied promise that the occupants will vacate the property upon demand.^[40] A summary action for ejectment is the proper remedy to enforce this implied obligation.^[41] The unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate.^[42]

Toleration is defined as "the act or practice of permitting or enduring something not wholly approved of."^[43] *Sarona v. Villegas*^[44] described what *tolerated acts* means, in this language:

"Professor Arturo M. Tolentino states that acts merely tolerated are 'those which by reason of neighborliness or familiarity, the owner of property *allows* his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who *permits* them out of friendship or courtesy.' x x x. And, Tolentino continues, even though 'this is *continued* for a long time, no right will be acquired by prescription.' x x x. Further expounding on the concept, Tolentino writes: 'There is tacit consent of the possessor to the acts which are merely tolerated. Thus, *not every case of knowledge and silence* on the part of the possessor *can be considered mere tolerance*. By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission."^[45]