

THIRD DIVISION

[G.R. No. 151212, September 10, 2003]

**TEN FORTY REALTY AND DEVELOPMENT CORP., REPRESENTED
BY ITS PRESIDENT, VERONICA G. LORENZANA, PETITIONER, VS.
MARINA CRUZ, RESPONDENT.**

DECISION

PANGANIBAN, J.:

In an ejectment suit, the question of ownership may be provisionally ruled upon for the sole purpose of determining who is entitled to possession *de facto*. In the present case, both parties base their alleged right to possess on their right to own. Hence, the Court of Appeals did not err in passing upon the question of ownership to be able to decide who was entitled to physical possession of the disputed land.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, seeking to nullify the August 31, 2001 Decision^[2] and December 19, 2001 Resolution^[3] of the Court of Appeals (CA) in CA- GR SP No. 64861. The dispositive portion of the assailed Decision is as follows:

"WHEREFORE, premises considered, the petition is hereby DISMISSED and the Decision dated May 4, 2001 is hereby AFFIRMED."^[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The facts of the case are narrated by the CA as follows:

"A complaint for ejectment was filed by [Petitioner Ten Forty Realty and Development Corporation] against x x x [Respondent Marina Cruz] before the Municipal Trial Court in Cities (MTCC) of Olongapo City, docketed as Civil Case 4269, which alleged that: petitioner is the true and absolute owner of a parcel of lot and residential house situated in #71 18th Street, E.B.B. Olongapo City, particularly described as:

`A parcel of residential house and lot situated in the above-mentioned address containing an area of 324 square meters more or less bounded on the Northeast by 041 (Lot 255, Ts-308); on the Southeast by 044 (Lot 255, Ts-308); on the Southwest by 043 (Lot 226-A & 18th street) and on the Northwest by 045 (Lot 227, Ts-308) and declared for taxation purposes in the name of [petitioner] under T.D. No. 002-4595-R and 002-4596.'

having acquired the same on December 5, 1996 from Barbara Galino by virtue of a Deed of Absolute Sale; the sale was acknowledged by said Barbara Galino through a '*Katunayan*'; payment of the capital gains tax for the transfer of the property was evidenced by a Certification Authorizing Registration issued by the Bureau of Internal Revenue; petitioner came to know that Barbara Galino sold the same property on April 24, 1998 to Cruz, who immediately occupied the property and which occupation was merely tolerated by petitioner; on October 16, 1998, a complaint for ejectment was filed with the Barangay East Bajac-Bajac, Olongapo City but for failure to arrive at an amicable settlement, a Certificate to File Action was issued; on April 12, 1999 a demand letter was sent to [respondent] to vacate and pay reasonable amount for the use and occupation of the same, but was ignored by the latter; and due to the refusal of [respondent] to vacate the premises, petitioner was constrained to secure the services of a counsel for an agreed fee of P5,000.00 as attorney's fee and P500.00 as appearance fee and incurred an expense of P5,000.00 for litigation.

"In respondent's Answer with Counterclaim, it was alleged that: petitioner is not qualified to own the residential lot in dispute, being a public land; according to Barbara Galino, she did not sell her house and lot to petitioner but merely obtained a loan from Veronica Lorenzana; the payment of the capital gains tax does not necessarily show that the Deed of Absolute Sale was at that time already in existence; the court has no jurisdiction over the subject matter because the complaint was filed beyond the one (1) year period after the alleged unlawful deprivation of possession; there is no allegation that petitioner had been in prior possession of the premises and the same was lost thru force, stealth or violence; evidence will show that it was Barbara Galino who was in possession at the time of the sale and vacated the property in favor of respondent; never was there an occasion when petitioner occupied a portion of the premises, before respondent occupied the lot in April 1998, she caused the cancellation of the tax declaration in the name of Barbara Galino and a new one issued in respondent's name; petitioner obtained its tax declaration over the same property on November 3, 1998, seven (7) months [after] the respondent [obtained hers]; at the time the house and lot [were] bought by respondent, the house was not habitable, the power and water connections were disconnected; being a public land, respondent filed a miscellaneous sales application with the Community Environment and Natural Resources Office in Olongapo City; and the action for ejectment cannot succeed where it appears that respondent had been in possession of the property prior to the petitioner."^[5]

In a Decision^[6] dated October 30, 2000, the Municipal Trial Court in Cities (MTCC) ordered respondent to vacate the property and surrender to petitioner possession thereof. It also directed her to pay, as damages for its continued unlawful use, P500 a month from April 24, 1999 until the property was vacated, P5,000 as attorney's fees, and the costs of the suit.

On appeal, the Regional Trial Court^[7] (RTC) of Olongapo City (Branch 72) reversed

the MTCC. The RTC ruled as follows: 1) respondent's entry into the property was not by mere tolerance of petitioner, but by virtue of a Waiver and Transfer of Possessory Rights and Deed of Sale in her favor; 2) the execution of the Deed of Sale without actual transfer of the physical possession did not have the effect of making petitioner the owner of the property, because there was no delivery of the object of the sale as provided for in Article 1428 of the Civil Code; and 3) being a corporation, petitioner was disqualified from acquiring the property, which was public land.

Ruling of the Court of Appeals

Sustaining the RTC, the CA held that petitioner had failed to make a case for unlawful detainer, because no contract -- express or implied -- had been entered into by the parties with regard to possession of the property. It ruled that the action should have been for forcible entry, in which prior physical possession was indispensable -- a circumstance petitioner had not shown either.

The appellate court also held that petitioner had challenged the RTC's ruling on the question of ownership for the purpose of compensating for the latter's failure to counter such ruling. The RTC had held that, as a corporation, petitioner had no right to acquire the property which was alienable public land.

Hence, this Petition.^[8]

Issues

Petitioner submits the following issues for our consideration:

- "1. The Honorable Court of Appeals had clearly erred in not holding that [r]espondent's occupation or possession of the property in question was merely through the tolerance or permission of the herein [p]etitioner;
- "[2.] The Honorable Court of Appeals had likewise erred in holding that the ejectment case should have been a forcible entry case where prior physical possession is indispensable; and
- "[3.] The Honorable Court of Appeals had also erred when it ruled that the herein [r]espondent's possession or occupation of the said property is in the nature of an exercise of ownership which should put the herein [p]etitioner on guard."^[9]

The Court's Ruling

The Petition has no merit.

First Issue:

Alleged Occupation by Tolerance

Petitioner faults the CA for not holding that the former merely tolerated respondent's occupation of the subject property. By raising this issue, petitioner is in effect asking this Court to reassess factual findings. As a general rule, this kind of

reassessment cannot be done through a petition for review on certiorari under Rule 45 of the Rules of Court, because this Court is not a trier of facts; it reviews only questions of law.^[10] Petitioner has not given us ample reasons to depart from the general rule.

On the basis of the facts found by the CA and the RTC, we find that petitioner failed to substantiate its case for unlawful detainer. Admittedly, no express contract existed between the parties. Not shown either was the corporation's alleged tolerance of respondent's possession.

While possession by tolerance may initially be lawful, it ceases to be so upon the owner's demand that the possessor by tolerance vacate the property.^[11] To justify an action for unlawful detainer, the permission or tolerance must have been present at the beginning of the possession.^[12] Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy. *Sarona v. Villegas*^[13] elucidates thus:

"A close assessment of the law and the concept of the word 'tolerance' confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons. First. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress – in the inferior court – provided for in the rules. If one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. Second, if a forcible entry action in the inferior court is allowed after the lapse of a number of years, then the result may well be that no action for forcible entry can really prescribe. No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court – upon a plea of tolerance to prevent prescription to set in – and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one year time bar to suit is but in pursuance of the summary nature of the action."^[14]

In this case, the Complaint and the other pleadings do not recite any *averment of fact* that would substantiate the claim of petitioner that it permitted or tolerated the occupation of the property by Respondent Cruz. The Complaint contains only bare allegations that 1) respondent immediately occupied the subject property after its sale to her, an action merely tolerated by petitioner;^[15] and 2) her allegedly illegal occupation of the premises was by mere tolerance.^[16]

These allegations contradict, rather than support, petitioner's theory that its cause of action is for unlawful detainer. *First*, these arguments advance the view that respondent's occupation of the property was unlawful at its inception. *Second*, they counter the essential requirement in unlawful detainer cases that petitioner's supposed act of sufferance or tolerance must be present right from the start of a

possession that is later sought to be recovered.^[17]

As the bare allegation of petitioner's tolerance of respondent's occupation of the premises has not been proven, the possession should be deemed illegal from the beginning. Thus, the CA correctly ruled that the ejectment case should have been for forcible entry -- an action that had already prescribed, however, when the Complaint was filed on May 12, 1999. The prescriptive period of one year for forcible entry cases is reckoned from the date of respondent's actual entry into the land, which in this case was on April 24, 1998.

Second Issue:
Nature of the Case

Much of the difficulty in the present controversy stems from the legal characterization of the ejectment Complaint filed by petitioner. Specifically, was it for unlawful detainer or for forcible entry?

The answer is given in Section 1 of Rule 70 of the Rules of Court, which we reproduce as follows:

"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 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."

While both causes of action deal only with the sole issue of physical or *de facto* possession,^[18] the two cases are really separate and distinct, as explained below:

"x x x. In forcible entry, one is deprived of physical possession of 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 basic inquiry centers on who has the prior possession *de facto*. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess, hence the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.

"What determines the cause of action is the nature of defendant's entry into the land. If the entry is illegal, then the action which may be filed