

## **FOURTH DIVISION**

**[ CA-G.R. SP No. 130860, November 21, 2014 ]**

**CORAZON P. NAVARETTE, SPOUSES MIMING RAMIREZ AND  
JANET N. RAMIREZ, PETITIONERS, VS. SPOUSES CHITO  
CALLANG AND MARLYN YAON , RESPONDENTS.**

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

**CARANDANG, J.:**

This is a petition for review under Rule 42 of the Rules of Court seeking the review of the Decision<sup>[1]</sup> dated April 15, 2013 rendered by the Regional Trial Court (RTC), Branch 27 of Bayombong, Nueva Vizcaya, the dispositive portion of which reads:

“WHEREFORE, this court finds the instant appeal meritorious and thereby REVERSES AND SETS ASIDE the Decision of September 24, 2012 rendered by the Municipal Trial Court of Bayombong, Nueva Vizcaya, and accordingly remands the case to the trial court for further proceedings with reasonable dispatch.”

The motion for reconsideration was denied by the RTC in the Order dated June 28, 2013<sup>[2]</sup> , hence the present petition.

Antecedents:

A complaint for ejectment was filed by Spouses Chito Callang and Marlyn Yaon against Corazon Navarrete on June 6, 2003 which case was docketed as Civil Case No. 3673 before the Municipal Trial Court of Bayombong, Nueva Vizcaya.<sup>[3]</sup>

The said complaint alleged that Felix Callang who was the father of plaintiff Chito Callang died intestate leaving a parcel of land with an area of 887 sq.m located at Purok 5, Bonfal West, Bayombong Nueva Vizcaya; that during the lifetime of Felix, he already disposed of some portions of the land; that the defendant (petitioner herein) who is a relative, pleaded to plaintiffs (respondents herein) to allow her to stay in the premises because she had no place to live; that plaintiffs allowed defendant to stay in the premises provided she would build only a small hut to use as shelter and provided further that when plaintiffs would need the lot, she would vacate and surrender possession thereof to plaintiffs; that defendant agreed and stayed on the lot without paying any rentals; that when the plaintiffs needed the lot, they verbally notified defendant to vacate said lot, however, the latter refused and instead categorically claimed ownership over the lot forcing plaintiffs to bring the matter before the Barangay Captain of Bonfal West for mediation/conciliation; that mediation/conciliation failed prompting the Barangay Captain to issue the

corresponding certification.<sup>[4]</sup>

The said complaint was amended on February 16, 2004 adding more defendants namely: Spouses Miming and Janet Ramirez and Ferdinand and Winnie Navarrete.<sup>[5]</sup>

Defendants admitted being relatives of the late Felix Callang and the plaintiff. However, they assert that plaintiffs had no locus standi to file the case against them because the lot in question had already been disposed of by Felix Callang even during his lifetime; that defendants are not even inside the lot of Felix as they have, for 27 years, occupying a three meter easement of the Colocol Creek to which the DENR and the NIA had jurisdiction; that the case was prematurely filed because it never passed the conciliation and mediation proceedings at the barangay level because Bonfal West has no jurisdiction over the subject lot as it is located within the Purok 7, Barangay Sta. Rosa, Bayombong, Nueva Vizcaya; that assuming arguendo that the parties had undergone mediation/conciliation in the Barangay, the complaint is still bound to fail because there was no demand made upon the defendants which is a jurisdictional requirement.<sup>[6]</sup>

The Municipal Trial Court (MTC) dismissed the case for lack of cause of action. The trial court ruled that plaintiffs failed to prove that a written demand to vacate was indeed served on the defendants on June 4, 2003 as alleged in their Position Paper, thus they have no cause of action against the defendants. The court ratiocinated that demand must be alleged and proven in order to enable the land owner to eject a person unlawfully withholding his/her property and under the present rule, only written demand maybe made, either by serving written notice of such demand upon the person found on the premises, or by posting such notice by mail as provided under Section 7, Rule 13 of the Rules of Court. Although the trial court recognized defendants as occupants of the subject lot by tolerance, it ruled that they are not considered deforciant occupants of the property unless there is a written demand to vacate.<sup>[7]</sup>

On appeal to the Regional Trial Court, the MTC decision was reversed and set aside on April 15, 2013. The RTC considered the original complaint as sufficient and effective prior demand required under the Rules, citing the case of *Hautea vs. Magallon*<sup>[8]</sup> wherein the Supreme Court held that: "*an allegation in an original complaint for illegal detainer that in spite of demands made by the plaintiff the defendants had refused to restore the land is considered sufficient compliance with the jurisdictional requirement of previous demand.*" (Italics Ours)<sup>[9]</sup>

The RTC also took cognizance of the allegations in the Amended Complaint that appellees were verbally notified to vacate the premises but adamantly refused claiming ownership thereof; that the matter was brought to the Barangay Captain for Conciliation and mediation conducted three times as contained in the Certificate to File Action; that the complaint pursued before the Barangay Captain is considered as a quasi-judicial demand; that in the Position Papers of the parties, it show that there was an oral demand made upon appellees.<sup>[10]</sup>

Aggrieved by the RTC decision, defendants-appellees (herein petitioners) now come before this Court on Petition for Review under Rule 42 of the Rules of Court.  
Issue/s:

The sole issue in contention in this present petition is whether or not the jurisdictional requirement of written demand to vacate in this unlawful detainer case was complied with by the respondents in accordance with Rule 70 of the Rules of Court.

It is maintained by petitioners that the MTC dismissed the complaint not because of the deficiency in the allegations in the complaint but because the written demand to vacate was not proved to have been made against them. The dismissal was due to the deficiency of evidence and not because of the deficient pleading. *There was no evidence to support the jurisdictional requirement on demand to vacate.*<sup>[11]</sup> (Italics Ours)

Petitioners cited the case of Lourdes dela Cruz v. Court of Appeals and Melba Tante<sup>[12]</sup> where the Supreme Court ruled:

Thus exclusive, original jurisdiction over ejectment proceedings (*accion interdital*) is lodged with the first level courts. This is clarified in Section 1, Rule 70 of the 1997 Rules of Civil Procedure that embraces an action for forcible entry (*detentacion*), where one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth. In actions for forcible entry, three (3) requisites have to be met for the municipal trial court to acquire jurisdiction. First, the plaintiffs must allege their prior physical possession of the property. Second, they must also assert that they were deprived of possession either by force, intimidation, threat, strategy, or stealth. Third, the action must be filed within one (1) year from the time the owners or legal possessors learned of their deprivation of physical possession of the land or building.

The other kind of ejectment proceeding is unlawful detainer (*desahucio*), where one unlawfully withholds possession of the subject property after the expiration or termination of the right to possess. Here, the issue of rightful possession is the one decisive; for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession. The essential requisites of unlawful detainer are: (1) the fact of lease by virtue of a contract express or implied; (2) the expiration or termination of the possessor's right to hold possession; (3) withholding by the lessee of the possession of the land or building after expiration or termination of the right to possession; (4) letter of demand upon lessee to pay the rental or comply with the terms of the lease **and** vacate the premises; and (5) the action must be filed within one (1) year from date of last demand received by the defendant.

Petitioners insist that if the original complaint, by itself, is deemed the written demand or notice to vacate, it would be proof *res ipsa loquitur* that at the time such original complaint was filed, no sufficient and effective prior demand to vacate was

made as required by Section 2, Rule 70.

Is the contention of petitioners correct?

Our Ruling:

We affirm the RTC with modification.

The material allegations in the complaint stated thus:

"That the defendant who is a relative of herein plaintiffs, because they have no place to live, pleaded to herein plaintiffs to stay temporarily on the lot in question and because of their insistence, plaintiffs hid to their request, Provided, that they will only build a small hut on the lot to use as shelter and Provided, further that if plaintiffs are in need of the same, they vacate and surrender possession of said lot;

xxxx

That since the plaintiffs are now in need of said lot, after notifying the defendant verbally to vacate the premises, she refused and arrogantly categorically claimed ownership of the lot;"<sup>[13]</sup>

From the foregoing, it is clear that petitioners' possession of the subject property is by mere tolerance of the owner.

The concept of tolerance has been explained as:

"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. They are acts of little disturbances which a person in the interest of neighborliness or friendly relations, permits others to do on his property, such as passing over the land, tying a horse therein, or getting some water from the well. Although this is continued for a long time, no right will be acquired by prescription.

There is tacit consent of the possessor to the acts which are merely tolerated. Xxx"<sup>[14]</sup>

It is well-established in our jurisprudence that one whose stay is merely tolerated