



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

MARVIN A. GALACGAC,  
Petitioner,

G.R. No. 221384

Present:

– versus –

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*  
GISMUNDO,  
LAZARO-JAVIER,  
LOPEZ, and  
ROSARIO,\* JJ.

REYNALDO BAUTISTA,  
Respondent.

Promulgated:

NOV 09 2020

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R E S O L U T I O N

**LOPEZ, J.:**

The court may dismiss a complaint for unlawful detainer based on lack of cause of action if the plaintiff's supposed act of tolerance is not present right from the start of the defendant's possession. This resolves the Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision<sup>2</sup> dated May 18, 2015 and Resolution<sup>3</sup> dated September 28, 2015 in CA-G.R. SP No. 131043.

ANTECEDENTS

\* Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

<sup>1</sup> *Rollo*, pp. 12-29.

<sup>2</sup> *Id.* at 32-45; penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a Member of this Court).

<sup>3</sup> *Id.* at 47-48.

In 2012, Benigno M. Galacgac (Benigno) filed against Reynaldo Bautista (Reynaldo) an action for unlawful detainer over a 180-square meter portion of Lot No. 10973 before the Municipal Trial Court in Cities (MTCC) of Laoag City, Branch 02. Allegedly in 1993, the heirs of Ines Mariano, namely: Cirila Dannug-Martin, Maxima Dannug-Dannug (Maxima), Arcadia Dannug-Pedro (Arcadia), and Isabel Dannug-Bulos (Cirila, *et al.*), partitioned and adjudicated the disputed area in favor of Benigno pursuant to a contingency fee agreement in consideration of his legal services in a civil case involving the property. On the same year, Benigno allowed Cirila, *et al.*'s caretaker, Saturnino Bautista (Saturnino), to occupy the land on condition that he will construct a house of light materials and will surrender its possession when needed. Later, Benigno learned that Saturnino's son, Reynaldo, started building a house of strong materials. Accordingly, Benigno sent demand letters to Reynaldo asking to defer the construction and to vacate the premises.<sup>4</sup>

On the other hand, Reynaldo claimed ownership of the disputed portion and averred that Maxima and Arcadia sold to him their shares over Lot No. 10973. Also, Reynaldo argued that the adjudication of the property to Benigno is void because he is prohibited from acquiring properties in litigation. Lastly, the contingency fee agreement and the partition were not recorded in the Register of Deeds and could not affect third persons.<sup>5</sup>

On June 29, 2012, the MTCC dismissed the complaint and ruled that Reynaldo's authority to possess the land emanated from the heirs of Ines Mariano and not from Benigno,<sup>6</sup> to wit:

The insistence of plaintiff of an alleged agreement with the father of the defendant respecting the latter's possession in the land cannot be seriously taken with much weigh[t] by the court in view of the denial by the defendant that such ever existed, and in the absence of any written contract to support such claim, and corollary to the principle on dead man's statute or the survivorship disqualification rule. By all indication, the father of the defendant, Saturnino Bautista, was the care taker of the Dannug sisters for a long time even before the start of litigation relative to the land suit, and was in fact been living in a house erected at the southern portion of the lot. **Hence, the court find[s] no reason for the latter to ask plaintiff's permission to possess the lot because, first of all, he was already in possession [of] the lot under the authority of the Dannug sisters, heirs of the declared owner Ines Mariano. Thus, there can be no implied tolerance to speak of in so far as defendant is concerned that calls for an implied promise to vacate upon demand precisely because [the] defendant have [sic] no contract with the plaintiff whatsoever in regard with his possession on the lot in suit. To reiterate, defendant's authority to possess the land, from the evidence presented, emanates not from the plaintiff but from the heirs of the late Ines Mariano, the**

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<sup>4</sup> CA rollo, pp. 37-43.

<sup>5</sup> *Id.* at 44-51.

<sup>6</sup> Rollo, pp. 59-69.

**Dannug sisters, Maxima D. Dannug and Arcadia Dannug-Pedro, by virtue of the public documents executed. x x x.**

x x x x

Accordingly, there being no termination of any express or implied contract that eventually leads to unlawfully withholding possession of the land that is present in the instant case, this summary action for the ejectment of the defendant from the premises cannot be given due course by the Court.

WHEREFORE, premises considered, this case is hereby ordered DISMISSED.

No pronouncement as to cost.

SO ORDERED.<sup>7</sup> (Emphasis supplied.)

Dissatisfied, Benigno appealed to the Regional Trial Court (RTC). However, Benigno died and was substituted by his heir Marvin A. Galacgac (Marvin). On May 30, 2013, the RTC reversed the MTCC's findings and ordered Reynaldo to surrender the possession of the lot. The RTC noted that Cirila, *et al.* had not impugned the validity of the deed of partition and adjudication while Reynaldo cannot raise its illegality because he is not a party to the instrument. Moreover, the RTC held that Benigno has a better right because the land was adjudicated to him long before the sale in favor of Reynaldo,<sup>8</sup> *viz.*:

WHEREFORE, the Decision of the Municipal Trial Court in Cities, Branch II, Laoag City is reversed and set aside as judgment is hereby rendered in favor of plaintiff-appellant Benigno M. Galacgac. Defendant-appellee Reynaldo Bautista including his heirs, assigns, agents, representatives and any person acting in his behalf, is therefore directed to vacate the southwestern portion consisting of 180 square meters of Lot No. 10973, Laoag Cadastre, and immediately deliver possession thereof to plaintiff-appellant.

Costs against defendant-appellee.

SO ORDERED.<sup>9</sup>

Unsuccessful at a reconsideration, Reynaldo elevated the case to the CA on the ground that the RTC erred in upholding Benigno's possession over the lot. On May 18, 2015, the CA reinstated the MTCC's decision dismissing the complaint and explained that Benigno failed to prove his supposed act of tolerance from the start of Reynaldo's occupation,<sup>10</sup> thus:

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<sup>7</sup> *Id.* at 67-69.

<sup>8</sup> *Id.* at 49-57.

<sup>9</sup> *Id.* at 57.

<sup>10</sup> *Supra* note 2.

**Record bears that respondents failed to prove that petitioner's possession of the subject property was merely based on the alleged tolerance of respondent Benigno M. Galacgac.** Although it was alleged in the complaint that respondent Benigno M. Galacgac allowed petitioner's father to occupy the disputed land in 1993, there was no allegation that the same accommodation was extended to petitioner. **It was not even made clear when petitioner obtained the alleged permission of respondent Benigno M. Galacgac to occupy the land,** which only bolstered petitioner's contention that he derived his title over the land from Maxima D. Dannug and Arcadia Dannug-Pedro, heirs of Ines Mariano, not from respondent Benigno M. Galacgac.

Notably, in support of petitioner's claim that his possession of the disputed property was in the concept of an owner, not by the mere tolerance of respondents or their predecessor respondent Benigno M. Galacgac, petitioner presented before the MTCC a Confirmation of Sale dated March 12, 2012 signed by Maxima D. Dannug and Arcadia Dannug-Pedro, confirming the sale made on September 10, 2000 of the latter's respective undivided 90 square-meter shares over Lot No. 10973 in favor of petitioner.  
x x x:

x x x x

**Since petitioner's possession of the subject premises is in the concept of his claim of ownership and not by mere tolerance of respondent Benigno M. Galacgac, respondents cannot simply oust petitioner from possession through the summary procedure of an ejectment proceeding.** Respondents must resort to the appropriate judicial action and cannot simply invoke the unregistered "Deed of Adjudication with Disposition and Partition" in the summary procedure for the ouster of petitioner. Again, the Court's determination of the issue of ownership in the present case is merely provisional for the purpose only of resolving the question of possession, and does not bar an appropriate action for the determination of legal ownership over the property.

WHEREFORE, the Regional Trial Court's Decision dated May 30, 2013 and Order dated July 5, 2013 are REVERSED and SET ASIDE. Consequently, the MTCC Decision dated June 29, 2012 dismissing the complaint for ejectment is REINSTATED.

SO ORDERED.<sup>11</sup> (Emphases supplied.)

Marvin sought reconsideration but was denied.<sup>12</sup> Hence, this recourse. Marvin maintains that his father, Benigno, alleged and proved the elements of an action for unlawful detainer.

## RULING

The petition is unmeritorious.

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<sup>11</sup> *Supra* at 38-44.

<sup>12</sup> *Supra* note 3, *rollo*, pp. 47-48.

A complaint for unlawful detainer must sufficiently allege and prove the following key jurisdictional facts, to wit: (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 to vacate the property, the plaintiff instituted the complaint for ejectment.<sup>13</sup>

Specifically, a person who occupies the land of another at the latter's permission or tolerance, 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 may be filed against him.<sup>14</sup> However, it is essential in ejectment cases of this kind that the plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered.<sup>15</sup> This is where Benigno's cause of action fails.

Here, the complaint for unlawful detainer alleged that Benigno permitted Saturnino to occupy the 180-square meter portion of Lot No. 10973, thus:

6) That sometime in 1993, after the cession of that southwestern portion of the land, the late Saturnino Bautista, father of the defendant, approached the undersigned plaintiff and asked if they could occupy his share above-mentioned by constructing a bodega or building where he and his family could stay in the meantime until they shall have bought a portion of the lot above-mentioned. He likewise promised the undersigned plaintiff that they shall pay the realty taxes of the whole lot if allowed to stay in that lot. The undersigned plaintiff gave his consent to the proposal provided that the bodega should be constructed with light materials only, and provided further that should herein plaintiff needs the lot or the condition agreed upon be violated, herein plaintiff shall have the right to demand for them to vacate the premises. Unfortunately, his son, herein defendant, is constructing a building of strong materials without herein plaintiff's permission and consent over the mentioned portion ceded to him as above-stated, violating the agreement between the plaintiff and the defendant's father[.]<sup>16</sup>

Nonetheless, the supposed permission or tolerance was unsubstantiated. Foremost, Saturnino died before the filing of the case and

<sup>13</sup> *Zacarias v. Anacay*, 744 Phil. 201, 208-209 (2014), citing *Cabrera v. Getaruela*, 604 Phil. 59, 66 (2009).

<sup>14</sup> *Rivera v. Rivera*, 453 Phil. 404, 411 (2003), citing *Spouses Pengson v. Ocampo, Jr.*, 412 Phil. 860, 866 (2001). See also *Spouses Refugia v. CA*, 327 Phil. 982, 1010 (1996).

<sup>15</sup> *Spouses Valdez, Jr. v. CA*, 523 Phil. 39, 48-50 (2006), citing *Ten Forty Realty and Development Corp. v. Cruz*, 457 Phil. 603, 610 (2003); and *Go, Jr. v. CA*, 415 Phil. 172, 185 (2001).

<sup>16</sup> CA rollo, p. 40.

testimony on any matter of fact occurring before his death is inadmissible.<sup>17</sup> Also, Saturnino was the caretaker of Lot No. 10973 and he occupied the land based on Cirila, *et al.*'s express permission. Corollarily, Saturnino has no reason to ask permission from Benigno. More importantly, Benigno did not extend the purported tolerance to Reynaldo. Admittedly, Benigno and Reynaldo have no agreement on the disputed area and even asserted opposing claims over its ownership. Benigno insisted that Cirila, *et al.* partitioned and adjudicated the portion in his favor. On the other hand, Reynaldo maintained that Maxima and Arcadia sold to him their shares over the land.

Taken together, the facts proved do not sustain the alleged cause of action. As such, the complaint may be dismissed for lack of cause of action which is usually made after questions of fact have been resolved on the basis of the evidence presented.<sup>18</sup> Here, we are in full agreement with the conclusions of the CA and the MTCC in dismissing the complaint since evidence is wanting to establish Benigno's supposed permission or tolerance from the time Reynaldo started occupying the property. It is dangerous to deprive Reynaldo of possession over the land by means of a summary proceeding just because Benigno used the word "tolerance" without sufficient allegations or evidence to support it.<sup>19</sup> As early as the 1960s, in *Sarona v. Villegas*,<sup>20</sup> this Court explained that a case for unlawful detainer alleging tolerance must definitely establish its existence from the start of possession. Otherwise, a case for forcible entry can mask itself as an action for unlawful detainer and permit it to be filed beyond the required one-year prescription period from the time of forcible entry, *viz.*:

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 of forcible entry can really prescribe. **No matter how long such defendant is in physical possession, plaintiff will**

<sup>17</sup> RULES OF COURT, Rule 130, Sec. 13, provides: SEC. 23. *Disqualification by reason of death or insanity of adverse party.* — Parties or assignor of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

<sup>18</sup> *Habagat Grill v. DMC-Urban Property Developer, Inc.*, 494 Phil. 603, 611 (2005); *Dabuco v. CA*, 379 Phil. 939, 949 (2000); and *The Manila Banking Corp. v. University of Baguio, Inc.*, 545 Phil. 268, 275-276 (2007).

<sup>19</sup> *Jose v. Alfuerto*, 699 Phil. 307, 321 (2012).

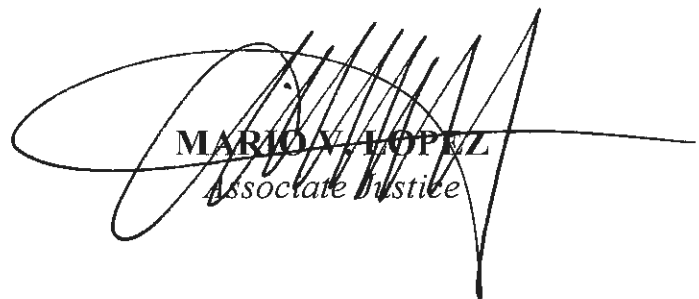
<sup>20</sup> 131 Phil. 365 (1968).

**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 the suit is but in pursuance of the summary nature of the action.<sup>21</sup> (Emphases supplied.)

Lastly, we stress that the only issue in ejectment proceedings is who between the parties is entitled to physical or material possession of the premises; that is, to possession *de facto*, not possession *de jure*. Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.<sup>22</sup> Given the dismissal of the complaint for lack of cause of action, there is no need to discuss the parties' respective claim of ownership. Besides, it is settled that even the registered owner of a real property cannot simply wrest possession from whoever is in its actual possession. This is especially true where the occupation of the property was not obtained through the means, or held under the circumstances contemplated by the rules on summary ejectment.<sup>23</sup> We reiterate that in giving recognition to ejectment suits, the purpose of the law is to protect the person who in fact has actual possession, and in case of a controverted proprietary right, the law requires the parties to preserve the status quo until one or the other sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership.<sup>24</sup>

**FOR THESE REASONS**, the petition is **DENIED**. The Court of Appeals Decision dated May 18, 2015 in CA-G.R. SP No. 131043 is **AFFIRMED**.

**SO ORDERED.**

  
MARIO Y. LOPEZ  
Associate Justice


<sup>21</sup> *Id.* at 373.

<sup>22</sup> *Pitargue v. Sorilla*, 92 Phil. 5, 13 (1952).

<sup>23</sup> *Sarmiento v. CA*, 320 Phil. 146, 156 (1995).

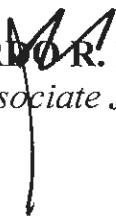
<sup>24</sup> *Dizon v. Concina*, 141 Phil. 589, 593 (1969). See also *Manlapaz v. CA*, 270 Phil 15, 24 (1990).

**WE CONCUR:**

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*


  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

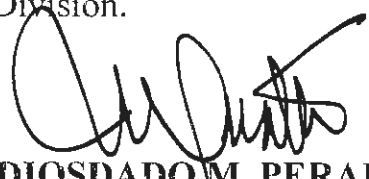
**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
*Chief Justice*