



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 2, 2022** which reads as follows:*

“G.R. No. 219306* (*Heirs of Mamerto Ingjug, petitioners vs. Amparo Palalay,¹ in her capacity as the school principal of Suba-Basbas Elementary School, et al., respondents*).

The heirs of Mamerto Ingjug (*petitioners*) appeal the November 17, 2014 Decision² and May 22, 2015 Resolution³ rendered by the Court of Appeals (*CA*) in CA-G.R. SP. No. 07426,⁴ which affirmed the October 19, 2011 Decision⁵ of the Regional Trial Court, Lapu-Lapu City, Branch 27 (*RTC*), dismissing the complaint for unlawful detainer filed by the petitioners.

Antecedents

Petitioners claim to be the grandchildren of the late Mamerto Ingjug (*Mamerto*), the registered owner of Lot No. 3116. On June 25, 1929, Mamerto donated a portion of the said lot to Lapu-Lapu City.⁶ Lot No. 3116 was subsequently subdivided into two portions: Lot No. 3116-A to Mamerto, and Lot No. 3116-B to Lapu-Lapu City. In 1992, petitioners declared themselves as the lawful heirs of Mamerto,

* Part of the Supreme Court Decongestion Project.

¹ Also referred to as Amparo Palalay in other parts of the *rollo*, (*Rollo*, pp. 3, 83, 86-87, 89-91, 100, 136, 148-150).

² *Rollo*, pp. 14-26; penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco, concurring.

³ *CA rollo*, pp. 206-207.

⁴ Also referred to as CA-G.R. CEB-SP No. 07426 in another part of the *rollo* (*Rollo*, p. 40).

⁵ Records, pp. 177-180; penned by Presiding Judge Toribio S. Quiwag.

⁶ Then known as the town of Opon.

adjudicated Lot No. 3116 among themselves, and paid the real estate taxes thereon.⁷

On October 29, 2008, petitioners filed a Complaint⁸ for Unlawful Detainer against Amparo Palalay (*Palalay*), school principal of Suba-Basbas Elementary School, and Carmelita Dulangon in her capacity as Lapu-Lapu City Superintendent of Department of Education (*respondents*). Petitioners alleged that Palalay introduced improvements on the vacant portions of Lot No. 3116. They claimed to have initially tolerated the use of their property by respondents, but when they sent a demand letter to vacate the same on April 18, 2008, respondents refused.⁹

Respondents countered that Lot No. 3116 is an integral part of the Suba-Basbas Elementary School, and that the ownership of the entire Lot No. 3116 had already been adjudicated in favor of Lapu-Lapu City. Moreover, the alleged construction had been existing even before the complaint was filed.¹⁰

Ruling of the MTCC

The Municipal Trial Court in Cities (*MTCC*) in Lapu-Lapu City dismissed the complaint through a Decision¹¹ rendered on May 5, 2010. The MTCC held that *res judicata* applies in view of the final decision of the RTC in Civil Case No. 2885-L which found that respondents had a better right over the contested realty, *viz.*:

On the basis of the above discussion, this Court finds that the principle of *res judicata* applies to the present action for unlawful detainer (ejectment). As such, the herein plaintiffs are now barred from pursuing said summary action for recovery of possession before this Court based on the former judgment. (Decision dated October 11, 1999) of the RTC, Branch 53, Lapu-Lapu City, in Civil Case No. 2885-L which former judgment operates as an evidence for the defendant school officials. Thus, it can be safely said that the Department of Education, through the herein defendant school officials, has the better right over the herein plaintiffs to the material and physical possession of the

⁷ *Rollo*, p. 15.

⁸ *Id.* at 59-64.

⁹ *Id.* at 61-62.

¹⁰ *Id.* at 16.

¹¹ *CA rollo*, pp. 118-129; penned by Presiding Judge Allan Francisco S. Garciano.

entire Lot 3116 including Lot 3116-A, being the end user and actual possessor thereof which right to use and possess it legally claimed under the City Government of Lapu-Lapu City, in consonance with the said final Decision of the RTC, in Civil Case No. 2885-L. In an action for unlawful detainer, the issue is the right to physical or material possession of the subject real property independent of any claim of the parties involved.

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in favor of the defendants AMPARO PALALAY and CARMELITA DULANGON and against the plaintiffs, thereby dismissing the above-docketed civil case for unlawful detainer, with costs against the plaintiffs.

SO ORDERED.¹² (*italics omitted*)

Ruling of the RTC

On appeal, the RTC upheld the dismissal of the complaint upon its finding that petitioners failed to show that respondents' initial possession was legal by virtue of either an implied or express contract, and that it became illegal after the expiration of the right to possess. The RTC disposed:

WHEREFORE, premises considered, the assailed May 5, 2010 Decision of the Municipal Trial Court in Cities, Lapu[-]Lapu City is hereby AFFIRMED in toto.

Costs against plaintiffs-appellants.

SO ORDERED.¹³ (*italics omitted*)

Petitioners filed their motion for reconsideration, but the same was denied by the RTC through an Order¹⁴ dated December 27, 2012. Hence, they appealed to the CA.

Ruling of the CA

In the now assailed decision, the CA upheld the dismissal of the complaint for unlawful detainer. It held that petitioners' complaint and position paper failed to prove that their predecessors-in-interest

¹² Id. at 129.

¹³ Records, p. 180.

¹⁴ Id. at 194-195.

merely tolerated the occupation of the property by respondents. The CA likewise emphasized that in an action for unlawful detainer, the determination of who has a better right of possession may be resolved without delving into the issue of ownership.¹⁵

The CA also held that despite the erroneous application of the principle of *res judicata* by the MTCC and the RTC, petitioners' complaint would still not prosper due to their failure to establish their cause of action.¹⁶ Hence, the CA decreed:

WHEREFORE, the appeal is **DISMISSED**. The Decision dated October 19, 2011, of the Regional Trial Court, Seventh Judicial Region, Branch 27, Lapu-Lapu City in Civil Case No. M-LLP-08-00546-CV is **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.¹⁷

Undeterred, petitioners filed a motion for reconsideration, but the same was denied by the CA *via* its May 22, 2015 Resolution.

Hence, this petition for review.

Issue

The lone issue submitted by petitioners is whether the CA seriously erred in dismissing their appeal because they failed to prove that their predecessors-in-interest merely tolerated the occupation of the contested property by respondents. Petitioners anchor their appeal on the ruling in *Delos Reyes v. Spouses Odone*¹⁸ (*Delos Reyes*), whereby the Court held that there is no need to prove tolerance when there is no proof that occupation was illegal from the beginning.¹⁹

Ruling of the Court

The petition lacks merit.

¹⁵ *Rollo*, pp. 20-23.

¹⁶ *Id.* at 26.

¹⁷ *Id.*

¹⁸ 661 Phil. 676 (2011).

¹⁹ *Rollo*, pp. 5-9.

Petitioners' reliance on *Delos Reyes* is misplaced. In said case, the RTC ruled that the plaintiff failed to allege how and when the dispossession started and was, therefore, unsuccessful in making a case for unlawful detainer or forcible entry. The CA agreed with the RTC by applying the ruling in *Go, Jr. v. Court of Appeals*,²⁰ and held that there must be proof that the owner's permission or tolerance be present at the beginning of the possession. However, the Court reversed the CA by simply perusing the allegations in the complaint for unlawful detainer. Since the allegations in the complaint determines the nature of the action, as well as jurisdiction, the Court found that the averments made by plaintiff sufficiently established a case for unlawful detainer. It was on this finding that the Court declared that allegations on how and when the dispossession occurred are relevant only when the issue is the timeliness of the filing of the complaint, and not when the jurisdiction of the MTC is assailed because the case is one for *accion publiciana* which is cognizable by the RTC.²¹

The present petition however, neither involves timeliness of the filing of the complaint nor a ruling that petitioners' complaint is one for *accion publiciana*. Instead, both the CA and the RTC similarly found that petitioners had no cause of action against respondents. The CA explained:

Since 1929, when the property was donated, respondents were in possession of the subject land and began constructing improvements thereon starting 1964. There was never any opposition over such acts of respondents from the supposed heirs until 2007, when the school principal of Suba-Basbas Elementary School constructed a concrete fence along the road right of way and improvised fence along Lot 3116 which prevented petitioners from entering their property. Petitioners insist that respondents' occupation of the property was by mere tolerance of their predecessors-in-interest and when they demanded for them to vacate and remove the fence which they erected thereon, respondents' right of possession was thus terminated.

A careful perusal of the instant complaint and petitioners' position paper does not show that there was tolerance on the part of their predecessors-in-interest in respondents' occupation of the subject property. There is a dearth of evidence that respondents

²⁰ 415 Phil. 172 (2001).

²¹ *Delos Reyes v. Spouses Odone*, supra note 18 at 684.

have unlawfully detained any portion of Lot No. 3116. In short, respondents' right to possess or occupy the property was not terminated because of any contract or agreement with petitioners or their predecessors-in-interest nor was tolerance to possess the same withdrawn. As such, the court *a quo* correctly ruled that there is no cause of action for unlawful detainer.²²

Simply, both the CA and the RTC held that mere allegations of tolerance in a complaint for unlawful detainer will not suffice. This finds basis in the settled rule 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.²³

It bears emphasis that in an action for unlawful detainer, it is imperative for the plaintiff to first and foremost prove that the occupation was based on his/her permission or tolerance.²⁴ Although herein petitioners alleged in their complaint that they merely tolerated respondents' occupation of the contested property, the averment should be substantiated considering that they had acquired their right from Mamerto through succession. As such, the Court does not find error on the part of the CA in holding that petitioners failed to prove that they or their predecessors-in-interest merely tolerated respondents' possession of the subject realty.

ACCORDINGLY, the petition for review on *certiorari* is **DENIED** for lack of merit. The Court of Appeals Decision dated November 17, 2014 and Resolution dated May 22, 2015, in CA-G.R. SP. No. 07426, are hereby **AFFIRMED**.

The Office of the Solicitor General's manifestation (with entry of appearance) as counsel for public respondents Amparo Palalay and Marilyn Andales, stating that said public respondents were previously

²² *Rollo*, p. 20.

²³ *De Guzman-Fuerte v. Sps. Estomo*, 830 Phil 653, 661-662 (2018); *Zacarias v. Anacay*, 744 Phil 201, 208-209 (2014).

²⁴ *Javelosa v. Tapus*, 835 Phil. 576, 589-590 (2018).

represented by Atty. Edwin A. Antepuesto who is no longer connected with DepEd Division of Lapu-Lapu City, is **NOTED**.

Let the Office of the Solicitor General be **FURNISHED** copies of all court processes in this case.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
93-A

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Philippine Judicial Academy (x)
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Judgment Division (x)
Supreme Court

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