which affirmed *in toto* the March 31, 2005 Decision of the Regional Trial Court, Branch 35, Santiago City, Isabela, in Criminal Case No. 35-4021 convicting Herman Medina for the crime of simple theft, is hereby **AFFIRMED.**

SO ORDERED.

Del Castillo,[**] *Bersamin,*[***] *Reyes,* and *Jardeleza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 186375. June 17, 2015]

ELENA ALCEDO, *petitioner, vs.* **SPS. JESUS SAGUDANG and MARLENE PADUA-SAGUDANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; THE PLAINTIFF MUST ALLEGE AND PROVE THAT HE WAS IN PRIOR PHYSICAL POSSESSION OF THE PROPERTY IN LITIGATION UNTIL HE WAS DEPRIVED THEREOF BY DEFENDANT.— Petitioner principally argues that the complaint is in the nature of an action for forcible entry over which the MCTC had jurisdiction. Well-settled is the rule that the jurisdiction of the Court, as well as the nature of the action, are determined by the allegations in the complaint. Section 1, Rule 70 of the Rules of Court requires that in actions for forcible entry, the plaintiff is allegedly deprived of the possession of any land or building by force, intimidation, threat,

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[**] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 2060 dated June 17, 2015.

[***] Designated Acting Member in lieu of Associate Justice Martin S. Villarama, Jr., per Raffle dated June 8, 2015.

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strategy, or stealth and that the action is filed any time within one year from the time of such unlawful deprivation of possession. This requirement implies that in such cases, the possession of the land by the defendant is unlawful from the beginning as he acquires possession thereof by unlawful means. The plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant. If the alleged dispossession did not occur by any of the means stated in Section 1, Rule 70 either by force, intimidation, threat, strategy or stealth, the proper recourse is to file a plenary action to recover possession with the RTC.

2. ID.; ID.; ID.; THE ISSUE OF WHETHER RESPONDENTS EMPLOYED FORCE, VIOLENCE OR INTIMIDATION IN TAKING POSSESSION OF PETITIONER'S PROPERTY BECOMES INCONSEQUENTIAL IN VIEW OF THE ABSENCE OF PRIOR POSSESSION.— Clearly then, it is respondents who enjoy the right of prior possession *de facto* over the contested lot since 2001 compared to petitioner's possession of Cadastral Lot 1027-B which began in 2004. On this account, the issue of whether respondents employed force, violence or intimidation in taking possession of petitioner's property becomes inconsequential in view of the absence of prior possession. The absence of prior physical possession by petitioner in this case warrants the dismissal of the complaint for forcible entry.

APPEARANCES OF COUNSEL

De Guzman Soriano and Associates Law Offices for petitioner.

Domogan & Associates Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse the

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Decision[1] dated 18 February 2008 and Resolution[2] dated 27 January 2009 of the Court of Appeals in CA-G.R. SP No. 97556.

The factual antecedents follow.

On 2 December 2005, petitioner Elena Alcedo filed with the Municipal Circuit Trial Court (MCTC) of Pozorrubio, Pangasinan a Complaint for Ejectment with Temporary Restraining Order (TRO) and Writ of Preliminary Injunction against respondent Spouses Jesus Sagudang and Marlene-Padua-Sagudang docketed as Civil Case No. S-922.

In the Complaint, petitioner alleged that she purchased a parcel of land in *Barangay* Inmalog, Sison, Pangasinan from siblings Pedro and Victorino Bacdang (Victorino), covered by Tax Declaration Nos. 021 00457 and 021 00458 in the latter's names; that she acquired one-half of the property from Pedro by virtue of Deed of Absolute Sale dated 22 November 1995 while she acquired the other half from Victorino through an Affidavit of Self Adjudication of Estate of Deceased Person with Deed of Absolute Sale on 4 June 2003;[3] that prior to the sale, the subject property was mortgaged to petitioner sometime in the 1980s and since then, she has been in possession over the subject land without interference or claim from other persons; that sometime in July 2005, respondents started to claim that

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[1] *Rollo*, pp. 43-52; Penned by Associate Justice Rosmari D. Carandang with Associate Justices Marina L. Buzon and Mariflor P. Punzalan Castillo concurring.

[2] *Id*. at 53-54.

[3] There seems to be a conflict in the date of the Affidavit of Self-Adjudication of Estate of Deceased Person with Deed of Absolute Sale. In petitioner's Complaint, the document was allegedly dated 4 June 2003. The same date was likewise used by petitioner in the instant petition. In her Position Paper however, the date that she used was 4 June 2004. In fact, 4 June 2004 is the date alleged by respondents when petitioner took possession of Cadastral Lot 1027-B. The MTC, RTC and Court of Appeals adopted the date 4 June 2004. The variance in the date is immaterial to the lis mota of the case. For purposes of uniformity, we are adopting the date 4 June 2004 as used by the lower courts.

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a portion of the subject land belongs to them; that several conferences were conducted between the parties at the office of the Department of Environment and Natural Resources (DENR); that on 10 November 2005, respondents and their relatives and friends entered the premises owned by petitioner through force, violence and intimidation by taking and put up a fence thereon without authority and legal right; that the malicious acts of respondents and their cohorts unlawfully deprived petitioner of her rights over the subject property and its fruits and income.[4]

Petitioner prayed for a Temporary Restraining Order (TRO) to stop respondents from uprooting plants and cutting trees on the land and to issue a writ of preliminary injunction to revert immediately to petitioner the possession of the land. She also prayed that after notice and hearing, the court issue an order for respondents to peacefully vacate the subject premises and to deliver possession thereof the petitioner; to pay solidarily the amount of ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages; to pay solidarily a reasonable rent of ₱5,000.00 for using the subject land from 10 November 2005 up to the time they will leave the subject premises and to return and deliver the income or proceeds earned by them from the fruits that have been harvested by them from the land; and to pay attorney's fee.[5]

Respondents claimed that they own the adjacent property declared in their names under Tax Declaration No. 021 00539 and denominated as Cadastral Lot No. 1027-C while petitioner purportedly owns Cadastral Lot 1027-A and 1027-B. Respondents acquired the land from Spouses Godrey Cawis and Annie Cawis on 31 December 2001. They took possession of the land and constructed a house thereon in 2002, introduced other improvements and paid realty taxes thereon. Sometime in 2005, Mrs. Galvin Backeng and Mr. Florentino Velasco disturbed the peaceful and actual possession of respondents by entering the premises of their property prompting respondents

[4] CA *rollo*, pp. 39-43.

[5] *Id*. at 47-48.

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to construct a fence around their property. Thereafter, petitioner filed a case for forcible entry against them.[6]

On 19 May 2006, the MCTC rendered a Decision[7] in favor of petitioner. The MCTC ruled that respondents forcibly took possession of the property possessed by petitioner. It took into consideration the affidavit of the former owner of Cadastral Lot 1027-C that the fence erected by respondents encroached on the property of petitioner. The MCTC ordered respondents to remove the fence and surrender possession of the property. It further ordered respondents to pay petitioner the sum of ₱20,000.00 as attorney's fees.

Respondents appealed to the Regional Trial Court (RTC). On 4 December 2006, the RTC Branch 45 of Urdaneta City, Pangasinan, affirmed the MCTC's ruling, the dispositive portion of which states:

> WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING, this [c]ourt finds no reversible error in the Decision of the [c]ourt a quo and hereby AFFIRMS the same in toto.[8]

Respondents elevated the case to the Court of Appeals which reversed the RTC's decision and dismissed the complaint. The Court of Appeals held that the MCTC does not have jurisdiction over the case which is essentially a boundary dispute, thus jurisdiction pertains to the RTC. The Court of Appeals disposed, thus:

> **WHEREFORE,** premises considered, both lower court's decision are hereby **SET ASIDE** and a new one is entered DISMISSING the Complaint for Forcible Entry docketed as Civil Case No. S-922 before the Municipal Circuit Trial Court of Pozorrubio, Pangasinan.[9]

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution[10] dated 27 January 2009.

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[6] *Id*. at 53-67.

[7] *Id*. at 163-166; Presided by Judge Ma. Ligaya V. Itliong-Rivera.

[8] *Id*. at 208.

[9] *Rollo*, p. 51.

[10] *Id*. at 53-54.

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Undaunted, petitioner filed the instant petition assigning the following errors allegedly committed by the Court of Appeals:

1. THE HONORABLE COURT OF APPEALS ERRED IN ORDERING THE DISMISSAL OF THE COMPLAINT FOR FORCIBLE ENTRY; and

2. THE HONORABLE COURT OF APPEALS ERRED IN DECLARING THAT THE PRESENT CASE IS A BOUNDARY DISPUTE WHICH SHOULD EITHER BE AN ACCION PUBLICIANA OR AN ACCION REINVINDICATORIA.[11]

Petitioner principally argues that the complaint is in the nature of an action for forcible entry over which the MCTC had jurisdiction.

Well-settled is the rule that the jurisdiction of the Court, as well as the nature of the action, are determined by the allegations in the complaint.[12] Section 1, Rule 70[13] of the Rules of Court requires that in actions for forcible entry, the plaintiff is allegedly deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth and that the action is filed any time within one year from the time of such unlawful deprivation of possession. This requirement implies that in such cases, the possession of the land by the defendant is unlawful

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[11] *Id*. at 13.

[12] *David v. Cordova*, 502 Phil. 626, 639 (2005) citing *De Leon v. Court of Appeals*, 315 Phil. 140, 150 (1995).

[13] 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.

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from the beginning as he acquires possession thereof by unlawful means. The plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant. If the alleged dispossession did not occur by any of the means stated in Section 1, Rule 70 either by force, intimidation, threat, strategy or stealth, the proper recourse is to file a plenary action to recover possession with the RTC.[14]

We reproduce the pertinent allegations in the complaint before the MCTC:

9. That x x x the said property was sold to the [petitioner] in 1995 and 2003 as shown on the unnotarized Deed of Absolute Sale dated November 22, 1995 and unnotarized Affidavit of Self Adjudication of Estate with Deed of Absolute Sale dated June 4, 2003 x x x;

x x x x x x x x x

12. That since 1980s, the plaintiff has been in possession over the subject land without any interference or claim by other person when she started to accept the mortgage unto her. She has been so far in actual possession of the land dispute for more than twenty five (25) years. But, tacking her possession with her predecessors, the possession is already more than fifty (50) years. In fact, the [petitioner] has already planted several trees on the land in question aside from the trees planted by her predecessors. She has also planted pineapple, cabbage and banana trees, which are about to be harvested in December, 2005;

13. That sometime in July, 2005, the [respondents] had started to claim that a portion of the land purchased by the [petitioner] from Bacdangs belongs to them as they do have a bigger land area declared for them for taxation purposes. Hence, in July, August and October, 2005, several confrontations and conferences were conducted between the [petitioner] and [respondents] at the office of the Department of Environment and Natural Resources (DENR), Barangay Captain of

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[14] *Ong v. Parel*, 407 Phil. 1045, 1053 (2001) citing *Sarmiento v. Court of Appeals*, 320 Phil. 146, 154 (1995); Moran, *Rules of Court*, Vol. III, 1997 ed., pp. 385-386; *Sarmienta, et al. v. Manalite Homeowners Assn., Inc.*, 647 Phil. 53, 61 (2010) citing *Quizon v. Juan*, 577 Phil. 470, 477-478 (2008).

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Brgy. Inmalog, Sison, Pangasinan and Municipal Council of Sison, Pangasinan to talk about this land dispute;

14. That without resolving the land dispute, the [respondents] together with their relatives and other companions [had] entered the premises of the land bought by the [petitioner] on **November 10, 2005** through force, violence and intimidation by taking possession thereof and constructing fence thereon without authority and legal right. The fence constructed is shown on the three (3) pictures taken therefrom. The unauthorized and forcible entry of the [respondents] was subsequently reported by the [petitioner's] caretaker Florentino Velasco to the police station of PNP Sison, Pangasinan.

x x x x x x x x x

15. That the portion of the land forcibly entered by the [respondents] as surrounded the various fruit bearing trees planted by [petitioner] and her predecessors, including the pineapple, cabbage, banana trees, which are about to be harvested. These malicious acts of the [respondents] and cohort unlawfully deprive the [petitioner] from absolutely exercising her rights over the subject property and enjoy the fruits and income that could be derived therefrom to her great damage and prejudice.

16. That there is indeed a need to revert the possession of the subject portion of the land to the [petitioner] the soonest possible time to avoid any multifarious suits that could crop up due to the unlawful taking of possession made by the [respondents]. Moreover, the [petitioner] would be unlawfully deprive[d] of the fruits of the subject portion of land, which are planted with plenty of cabbage, pineapple, fruit bearing banana trees and mango trees, if the possession of the subject land would not be returned immediately to her.[15]

On its face, the averments in the Complaint show that they have sufficiently established a cause of action for forcible entry. Considering that the test for determining the sufficiency of the allegations in the complaint is whether, admitting the facts alleged, the court can render a valid judgment in accordance with the prayer of the plaintiff,[16] we find that the Court of Appeals erred in ruling that the MCTC had no jurisdiction over the case.

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[15] CA *rollo*, pp. 40-44.

[16] *Nuñez v. SLTEAS Phoenix Solutions, Inc*., 632 Phil. 143, 154 (2010).

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The correct ruling on jurisdiction notwithstanding, the lower courts' ruling should be reversed because petitioner failed to prove the allegations in her complaint. Allegation is not tantamount to proof. It must be stressed that one who alleged a fact has the burden of proving it. Mere allegation without supporting evidence is not sufficient to establish a *prima facie* case of prior physical possession.[17]

Respondents' contention that they have been in physical possession way ahead of petitioner was thoroughly discussed in their Comment which they delineated the locations of the three material lots and how they started their possession of the subject property in 21 December 2001, to wit:

> As presented in respondents[']s Petition earlier filed to the Honorable Court of Appeals, it was factually shown and clearly delineated by Exhibit "6" of respondents position paper filed before the Honorable trial court, that there are three (3) material lots to be considered in the determination of the respective lands of the parties. From among the 3 lots, the lot which is adjacent to the lot of the petitioners is Lot No. 1027-B in the name of Victorino Bacdang with a declared area of 2,464 square meters (actual area is 2,628 square meters). The said lot is, therefore, actually situated in between the land of the petitioners and the land (Lot 1027-A) of Pedro Bacdang with a declared area of 2,464 square meters (actual area is 2,627 square meters). Logically, the petitioner could only have possessed the adjacent land of Victorino Bacdang (Lot 1027-B) not earlier than June 4, 2004 when she allegedly acquired the same as shown by the unnotarized Affidavit of Self-Adjudication and deed of sale attached as Annex "D" of the complaint.
>
> On the part of the respondents, they personally started their possession over the subject land in December 21, 2001 when they acquired the land from the spouses Godfrey Cawis and Annie Cawis. Simply stated, the petitioner cannot claim prior possession as against respondents because even before June 4, 2004, the respondents were already in peaceful ownership and possession of the land.

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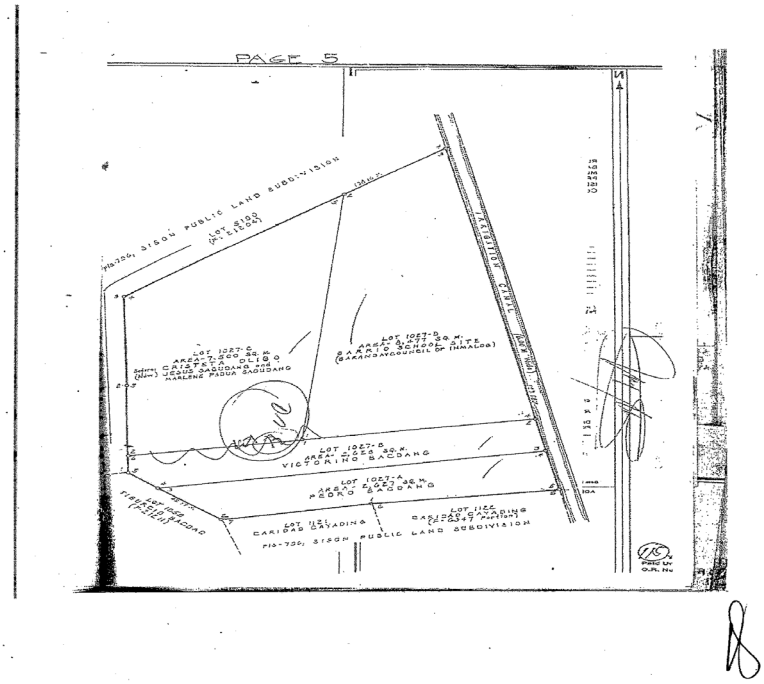
[17] *Quizon v. Juan*, 577 Phil. 470, 479 (2008) citing *V.V. Soliven Realty Corp. v. Ong*, 490 Phil. 229, 237 (2005) and *Machica v. Roosevelt*, 523 Phil. 199, 209-210 (2006).

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It could be at the height of absurdity and contrary to human experience if what petitioner would allege as encroached by the respondents was Lot No. 1027-A. That is because the respondents would be totally passing over, if not including, the whole of Lot No. 1027-B with a wide area of 2,628 square meters and which is what is proximately adjacent to their land.

As it was, what the respondents fenced was a portion of their lot which is situated towards the boundary of Lot 1027-B in the name of Victorino Bacdang. And such fenced portion is what the petitioner claims to be encroached upon by the respondents. But to reiterate, the respondents have long been in peaceful possession thereof before the petitioner acquired the adjacent lot of Victorino Bacdang on June 4, 2004. [18]

For clarity, we reproduce a portion of the sketch plan submitted by respondents, thus:



[18] *Rollo*, pp. 73-74.

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Petitioner failed to provide with specificity the portion of her lot allegedly encroached by respondents. Presumably, the portion of the lot claimed by petitioner to have been encroached by respondents pertains to Cadastral Lot 1027-B which is adjacent to respondents' lot, Cadastral Lot 1027-C. Clearly then, it is respondents who enjoy the right of prior possession *de facto* over the contested lot since 2001 compared to petitioner's possession of Cadastral Lot 1027-B which began in 2004.

On this account, the issue of whether respondents employed force, violence or intimidation in taking possession of petitioner's property becomes inconsequential in view of the absence of prior possession.

The absence of prior physical possession by petitioner in this case warrants the dismissal of the complaint for forcible entry.

WHEREFORE, the petition is **DENIED.** The Decision and Resolution dated 18 February 2008 and 27 January 2009, respectively of the Court of Appeals in CA-G.R. SP No. 97556, are **AFFIRMED** in so far as it dismisses the Complaint. The Complaint for Forcible Entry is **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perlas-Bernabe, JJ.,* concur.