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SECOND DIVISION

[G.R. No. 116192. November 16, 1995]

EUFEMIA SARMIENTO, *petitioner, vs.* COURT OF APPEALS and GENEROSA S. CRUZ, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; AVERMENTS SET FORTH IN THE COMPLAINT DETERMINE JURISDICTION.**— Well-settled is the rule that the jurisdiction of the court, as well as the nature of the action, are determined by the averments in the complaint. Accordingly, the issue in the instant case can only be properly resolved by an examination and evaluation of the allegations in the complaint in Civil Case No. 899 of said trial court.

2. **ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; DISTINGUISHED.**— Forcible entry and unlawful detainer cases are two distinct actions defined in Section 1, Rule 70 of the Rules of Court. 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.

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3. **ID.; ID.; ID.; NATURE OF ENTRY INTO THE LAND DETERMINES THE PROPER CAUSE OF ACTION.**— 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 against the intruder within one year therefrom is forcible entry. If, on the other hand, the entry is legal but the possession thereafter became illegal, the case is one unlawful detainer which must be filed within one year from the date of the last demand.

4. **ID.; ID.; ID.; SUMMARY NATURE; REASON THEREFOR.**— *First.* Forcible entry into the land is an open challenge to the right of the lawful possessor, the violation of which right authorizes the speedy redress in the inferior court provided for in the Rules. If a period of one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy and the aggrieved 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 merely make a demand, bring suit in the inferior court — upon a plea of tolerance to prevent prescription from setting 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.

5. **ID.; ID.; ID.; JURISDICTIONAL FACTS MUST APPEAR ON THE FACE OF THE COMPLAINT.**— To give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint should embody such a statement of facts as brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The

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complaint must show enough on its face to give the court jurisdiction without resort to parol testimony. The jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, as in the case at bar, the remedy should either be an *accion publiciana* or an *accion reivindicatoria* in the proper regional trial court.

6. **ID.; ID.; ID.; PURPOSE OF THE LAW.**— We have held that in giving recognition to the action of forcible entry and unlawful detainer, 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.

APPEARANCES OF COUNSEL

De Guzman, Florentino, Celis, Moncupa & Torio for petitioner.

David G. Paguio for private respondent.

DECISION

REGALADO, *J.*:

The judgment promulgated on February 28, 1994 by respondent Court of Appeals in CA-G.R SP No. 32263[1] reversing the decision of the regional trial court, as well as its resolution of June 29, 1994 denying herein petitioner's motion for reconsideration, are assailed in this petition for review on certiorari.

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[1] Penned by Justice Minerva P. Gonzaga-Reyes, with Justices Eduardo G. Montenegro and Lourdes K. Tayao-Jaguros concurring.

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This case originated from a complaint for ejectment with damages filed by herein private respondent Generosa S. Cruz, as plaintiff, against herein petitioner Eufemia Sarmiento, as defendant, in the Municipal Circuit Trial Court of Dinalupihan-Hermosa, Bataan as Civil Case No. 899, which complaint alleges these material facts:

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2. That the plaintiff acquired by purchase a parcel of land known as Lot No. 2-A of the subd. plan, Psd-03-0345 being a portion of Lot 2, covered by TCT No. T-147219, located at Bo. Mabuco, Hermosa, Bataan, containing an area of 280 square meters, xerox copy of the title is hereto attached as Annex "A" hereof and for taxation purposes, the same is declared in the name of the plaintiff, xerox copy of the tax declaration is hereto attached as Annex "B" of this complaint;

3. That the adjacent lot of plaintiff is still owned by the family of Atty. Gonzalo Nuguid but the same is being used and occupied by the defendant where a house was constructed thereon;

4. That when the plaintiff caused the relocation of her lot herein mentioned, it was found out by the Geodetic Engineer that the defendant is encroaching on her lot for about 71 square meters, copy of the relocation sketch by said surveyor is hereto attached as Annex "C" hereof;

5. That when the plaintiff talked to the defendant that she would like to remove the old fence so that she could construct a new fence which will cover the true area of her property, the defendant vehemently refused to let the plaintiff remov(e) the said fence and menacingly alleged that if plaintiff remove(d) the said fence to construct a new one, she would take action against the plaintiff legally or otherwise;

6. For fear that plaintiff may be charged in court should she insist on removing the fence encroaching on her property, plaintiff now seeks judicial relief;

7. That plaintiff refer(red) this matter to the Katarungang Pambarangay of Mabuco for settlement, however, the efforts of

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the Lupon Tagapamayapa turned futile, as evidenced by a certification to file action issued by the Lupon secretary and attested by the Lupon Chairman, copy of the certification to file action is hereto attached as Annex "D" hereof;

8. Plaintiff as much as possible would like to avoid court litigation because she is poor but nevertheless she consulted the undersigned counsel and a demand letter was sent to the defendant for conference and/or settlement but the defendant stood pat that she will not allow the removal of the fence, thus depriving the plaintiff of the use and possession of the said portion of her lot (71 square meters) which is being occupied by the defendant for several years, xerox copy of the demand letter is hereto attached as Annex "E" of this complaint;

9. That by virtue of the willful refusal of the defendant to allow the plaintiff to have the fence dismantled and/or to be removed, the plaintiff is deprived of the possession and she was forced to hire the services of counsel for which she contracted to pay the sum of P2,000.00 plus acceptance of P1,000.00 until the termination of this case before this Honorable Court.[2]

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On January 21, 1993, the trial court, on motion, issued an order giving the defendant therein an extension of five days within which to file her answer to the complaint.[3] This was opposed by the plaintiff therein on the ground that Section 15(e) of the Rule on Summary Procedure does not allow the filing of motions for extension of time to file pleadings, affidavits or any other papers.[4] Nonetheless, defendant filed on January 29, 1993 her "Answer with Motion to Dismiss."[5] Plaintiff filed an *ex parte* motion reiterating her contention that the filing by defendant of her aforesaid answer with

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[2] *Rollo*, 55-57.

[3] *Ibid*., 58.

[4] *Ibid*., 59-60.

[5] *Ibid*., 61-67.

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motion was barred for reason that her preceding motion for extension of time to file an answer is a prohibited pleading.[6] On February 4, 1993, the trial court, finding merit in plaintiff's *ex parte* motion, ordered that defendant's answer be stricken from the records for having been filed out of time.[7] The case was then submitted for decision.

On February 18, 1993, the trial court rendered its decision, with the following decretal portion:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter:

1. To vacate the area being encroached (upon) by the defendant and allowing the plaintiff to remove the old fence permanently and (to) make the necessary enclosure of the area pertaining to the herein plaintiff containing an area of 280 square meters, more or less;

2. Ordering the defendant to pay the plaintiff the sum of P1,500.00 as attorney's fees. No pronouncement as to damages;

3. To pay the cost(s) of this suit.[8] (Corrections in parentheses supplied.)

Defendant filed a motion for the reconsideration of said judgment, but the same was denied by the trial court for lack of merit in its order dated March 2, 1993.[9]

On appeal to the Regional Trial Court of Dinalupihan Bataan, Branch 5, in Civil Case No DH-121-93, defendant assailed the jurisdiction of the court *a quo*. On June 21, 1993, said lower appellate court rendered judgment, stating in part as follows:

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[6] *Ibid.*, 68.

[7] *Ibid.*, 69.

[8] *Ibid.*, 70-71.

[9] *Ibid.*, 72.

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A perusal of the records of the case and the memorandum of appeal of the adversaries led this court to the opinion that the court *a quo* did not acquire jurisdiction to hear, try and decide the instant appealed case based on (the) reason that the said case should be one of question of ownership or *accion rei(vin)dicatoria* rather than that of forcible entry as the(re) was no allegation of prior possession by the plaintiff (of) the disputed lot as required by law and jurisprudence. Absence of allegations and proof by the plaintiff in forcible entry case of prior possession of the disputed lot (sic) cannot be said that defendant dispossesses her of the same, thus, the legal remedy sought by the plaintiff is not the proper one as it should have been *accion publiciana* or *accion rei(vin)dicatoria*, as the case may be, and the forum of which is the Regional Trial Court.

This Court declines to venture into other issues raised by the defendant/appellant considering that the resolution on jurisdiction renders the same moot and academic."[10] (Corrections in parentheses ours.)

Therein plaintiff's motion for reconsideration having been denied in said lower court's order dated August 12, 1993,[11] she elevated the case to the Supreme Court through a petition for review on certiorari, purportedly on pure questions of law. This Court, treating the petition as a special civil action for certiorari, referred the case to respondent Court of Appeals for proper determination and disposition pursuant to Section 9(1) of Batas Pambansa Blg. 129.[12]

On February 28, 1994, the Court of Appeals rendered judgment in CA-G.R. SP No. 32263[13] reversing the decision of the regional trial court and reinstating that of the municipal circuit trial court, hence the present petition.

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[10] *Ibid.*, 98.

[11] *Ibid.*, 115.

[12] *Rollo*, CA-G.R. SP No. 32263, 79.

[13] *Ibid., Id.*, 130-139.

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The chief issue for our resolution is whether or not the court of origin had jurisdiction over the ejectment case. Well-settled is the rule that the jurisdiction of the court, as well as the nature of the action, are determined by the averments in the complaint.[14] Accordingly, the issue in the instant case can only be properly resolved by an examination and evaluation of the allegations in the complaint in Civil Case No. 899 of said trial court.

A careful reading of the facts averred in said complaint filed by herein private respondent reveals that the action is neither one of forcible entry nor of unlawful detainer but essentially involves a boundary dispute which must be resolved in an *accion reivindicatoria* on the issue of ownership over the disputed 71 square meters involved.

Forcible entry and unlawful detainer cases are two distinct actions defined in Section 1, Rule 70 of the Rules of Court. 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.[15]

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[14] Ganadin *vs.* Ramos, et al., L-23547, September 11, 1980, 99 SCRA 613; Del Castillo *vs.* Aguinaldo, et al., G.R. No. 57127, August 5, 1992, 212 SCRA 169; Sumulong *vs.* Court of Appeals, et al., G.R. No. 108817, May 10, 1994, 232 SCRA 372.

[15] Sumulong *vs.* Court of Appeals, et al., *ante*.

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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 against the intruder within one year therefrom is forcible entry. If, on the other hand, the entry is legal but the possession thereafter became illegal, the case is one of unlawful detainer which must be filed within one year from the date of the last demand.[16]

In the case at bar, the complaint does not characterize herein petitioner's alleged entry into the land, that is, whether the same was legal or illegal. It does not state how petitioner entered upon the land and constructed the house and the fence thereon. It is also silent on whether petitioner's possession became legal before private respondent made a demand on her to remove the fence. The complaint merely avers that the lot being occupied by petitioner is owned by a third person, not a party to the case, and that said lot is enclosed by a fence which private respondent claims is an encroachment on the adjacent lot belonging to her.

Furthermore, it is also alleged and admitted in the complaint that the said fence was already in existence on that lot at the time private respondent bought her own lot and it was only after a relocation survey was made that it was found out that petitioner is allegedly encroaching on the lot of the former. Consequently, there is here no contract, express or implied, between petitioner and private respondent as would qualify it as a case of unlawful detainer. Neither was it alleged that the possession of the disputed portion of said lot was acquired by petitioner through force, intimidation, threat, strategy or stealth to make out a case of forcible entry.

Private respondent cannot now belatedly claim that petitioner's possession of the controverted portion was by

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[16] Sarona, et al. *vs.* Villegas, et al., L-22984, March 27, 1968, 22 SCRA 1257.

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mere tolerance since that fact was never alleged in the former's basic complaint, and this argument was raised in her later pleadings more as an afterthought. Also, it would be absurd to argue that private respondent tolerated a state of affairs of which she was not even then aware. Finally, to categorize a cause of action as one constitutive of unlawful detainer, plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered.[17]

Indeed, and this was definitely not the situation that obtained in and gave rise to the ejectment suit, to hold otherwise would espouse a dangerous doctrine, for two reasons: *First.* Forcible entry into the land is an open challenge to the right of the lawful possessor, the violation of which right authorizes the speedy redress in the inferior court provided for in the Rules. If a period of one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy and the aggrieved 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 merely make a demand, bring suit in the inferior court — upon a plea of tolerance to prevent prescription from setting 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.[18]

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[17] Muñoz, et al. *vs.* Court of Appeals, et al., G.R. No. 102693, September 23, 1992, 214 SCRA 216.

[18] Sarona, et al. *vs.* Villegas, et al., *supra*, citing Monteblanco *vs.* The Hinigaran Sugar Plantation, Inc., et al., 63 Phil. 797 (1936).

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To give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint should embody such a statement of facts as brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature.[19] The complaint must show enough on its face to give the court jurisdiction without resort to parol testimony.[20]

The jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, as in the case at bar, the remedy should either be an *accion publiciana* or an *accion reivindicatoria* in the proper regional trial court.[21]

If private respondent is indeed the owner of the premises subject of this suit and she was unlawfully deprived of the real right of possession or the ownership thereof, she should present her claim before the regional trial court in an *accion publiciana* or an *accion reivindicatoria*, and not before the municipal trial court in a summary proceeding of unlawful detainer or forcible entry. For even if one is the owner of the property, the possession thereof cannot be wrested from another who had been in the physical or material possession of the same for more than one year by resorting to a summary action for ejectment. This is especially true where his possession thereof was not obtained through the means or held under the circumstances contemplated by the rules on summary ejectment.

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[19] 36A C.J.S., Forcible Entry & Detainer, Sec. 39, p. 1002.

[20] Ind. - Boxley *vs.* Collins, 4 Blackf. 320; Me. - Treat *vs.* Brent, 51 Me. 478.

[21] Sarona, et al. *vs.* Villegas, et al.; Muñoz *vs.* Court of Appeals, et al., *supra*.

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We have held that in giving recognition to the action of forcible entry and unlawful detainer, 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.[22]

On the foregoing premises and with these conclusions, it is unnecessary to pass upon the other issues raised in the petition at bar.

ACCORDINGLY, the instant petition is GRANTED, and the judgment of the Court of Appeals in CA G.R. SP No. 32263 is hereby REVERSED and SET ASIDE. The judgment of the Regional Trial Court of Dinalupihan, Bataan, Branch 5, in Civil Case No. DH-121-93 is REINSTATED, without pronouncement as to costs.

SO ORDERED.

Narvasa, C.J. (Chairman), Puno, and *Mendoza, JJ.*, concur.

Francisco, J., is on leave.

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[22] Dizon *vs.* Concina, et al., L-23756, December 27, 1969, 30 SCRA 897; Manlapaz, et al. *vs.* Court of Appeals, et al., G.R. No. 39430, December 3, 1990, 191 SCRA 795