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SECOND DIVISION

[G.R. No. 80638. April 26, 1989]

GABRIEL ELANE, *petitioner, vs.* **COURT OF APPEALS and INOCENCIO V. CHUA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE DISPUTABLE PRESUMPTION OF COMPLETENESS OF SERVICE DOES NOT ARISE IN THE ABSENCE OF PROOF THAT THE FIRST NOTICE OF THE REGISTERED LETTER WAS SENT AND DELIVERED TO THE ADDRESSEE.** — It is incumbent upon a party who relies upon constructive service under Section 5 of Rule 13 of the Rules to prove that the first notice of the registered letter was sent and delivered to the addressee, as the presumption that official duty has been regularly performed does not apply to such a situation. Here, the assertions in the petition of the facts stated in the next preceding paragraph are unsubstantiated. In the absence of such proof in the record, the disputable presumption of completeness of service does not arise.

2. **ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; WHAT IS DECISIVE IS NOT WHETHER ONE HAS A LEGAL RIGHT TO POSSESS BUT WHETHER ONE IS IN ACTUAL PHYSICAL POSSESSION OF THE CONTESTED LOT.** — As tersely emphasized by respondent court, and correctly so, "it is of no moment that petitioner's right to occupy said parcel of land by reason of the permit issued to him by the Bureau of Forestry has already expired. For, it is not whether he has a legal right to possess it that is in issue; it is whether he is in actual *physical possession of it that is decisive in the instant case* for forcible entry."

3. **CIVIL LAW; PROPERTY; ACQUISITION OF POSSESSION; SHOULD A QUESTION ARISE REGARDING THE FACT OF POSSESSION, THE PRESENT POSSESSOR SHALL BE PREFERRED; IF THERE ARE TWO POSSESSORS, THE ONE LONGER IN POSSESSION.** — Private respondent was in earlier possession of the contested lot; his sales application preceded

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that of petitioner; his warehouse and gasoline station already existed long before petitioner took possession of the parcel of land in question; and he has been paying taxes and rental fees thereon since 1968. As provided by the Civil Code — "Art. 538. Possession as a fact cannot be recognized at the same time in two different personalities except in the case of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessors, the one longer in possession; x x x." Having been in prior continuous possession, private respondent is preferentially entitled to occupy the land.

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; ONE-YEAR PRESCRIPTIVE PERIOD; SHOULD BE COUNTED FROM THE TIME THERE WAS DEMAND TO DESIST FROM SUCH DISPOSSESSION AFTER DISCOVERY THEREOF HAD NOT YET EXPIRED AT THE TIME OF FILING OF EJECTMENT SUIT BY RESPONDENT.** — Petitioner's intrusion upon the disputed premises can properly be categorized as one effected through stealth. Where forcible entry was thus made clandestinely, the one-year prescriptive period should be counted from the time private respondent demanded that the deforciant desist from such dispossession when the former learned thereof.[23] The records reflect that such discovery and prohibition took place on February 15, 1980, reiterated thereafter in the demand letter of March 1, 1980, both to no avail. Consequently, the one-year period had not expired on March 6, 1980 when private respondent filed the ejectment suit with the then City Court of Olongapo City.

APPEARANCES OF COUNSEL

Mario O. Leyco for petitioner.
Perfecto R. Bautista for private respondent I.V. Chua.

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DECISION

REGALADO, *J.*:

The decision promulgated on September 30, 1987 by respondent Court of Appeals in CA-G.R. SP No. 09536,[1] which reversed the decisions of the Regional Trial Court[2] and, correlatively, the Municipal Trial Court of Olongapo City,[3] is assailed in this petition for review on *certiorari*.

Private respondent Inocencio V. Chua filed an action for forcible entry in the then City Court of Olongapo City for the eviction of petitioner Gabriel Elane from a portion of a parcel of land designated as Block V, LC Project No. 14, Olongapo City, BF Map LC 2427, which was the subject of a permit to occupy issued to private respondent by the Bureau of Forestry on August 16, 1961. Private respondent alleges that on February 15, 1980, while visiting the property, he discovered that petitioner was constructing a semi-concrete building on a portion thereof, without his knowledge and consent. The order made by private respondent upon petitioner to desist therefrom was ignored by the latter.[4] When his demand letter of March 1, 1980 to stop said construction was refused, private respondent filed an action for forcible entry.[5]

In his answer, petitioner Elane claims that he was granted a permit by the Bureau of Forest Development over a parcel of land located at Upper Kalaklan, with an area of 360 square meters, more or less, designated as Block V, LC Project No. 14, Olongapo City, BF Map LC 2427, as allegedly evidenced

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[1] *Inocencio V. Chua vs. Hon. Alicia L. Santos, et al.*: penned by Justice Pedro A. Ramirez, with the concurrence of Justice Oscar R. Victoriano, separate concurring opinions of Justices Leonor Ines-Luciano and Jesus M. Elbinias, and dissenting opinion of Justice Fidel P. Purisima.

[2] Civil Case No. 102-0-84, Regional Trial Court, Branch LXXIII, Olongapo City, presided over by Judge Alicia L. Santos.

[3] Civil Case No. 1959, Municipal Trial Court, Branch V, Olongapo City, Judge Damaso B. Barquin, presiding.

[4] *Rollo*, 35-36.

[5] Exhibit H; *Rollo*, 37.

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by a certification from the said bureau dated April 10, 1979; that he has been in possession and occupation of that parcel of land continuously and uninterruptedly since 1970, having originally erected a hut thereon which was later replaced by a bungalow; and that the land has been declared for taxation in his name and the real property taxes thereon paid by him for the years 1970 to 1979.[6]

On February 14, 1984, the Municipal Trial Court of Olongapo City rendered a decision dismissing the complaint and which, on appeal, was affirmed *in toto* by the Regional, Trial Court of Olongapo City.

Thereafter, herein private respondent elevated the case on a petition for review to respondent court which reversed the decisions of the two courts *a quo* and rendered judgment ordering therein respondent Elane to remove or demolish the residential house or building that he constructed on that part of the land in question, to vacate and return possession of said parcel of land to therein petitioner Chua and to pay said petitioner ₱5,000.00 by way of attorney's fees, with the costs of suit.[7] A motion for reconsideration was denied on November 3, 1987.[8]

In the present appeal, petitioner contends that the respondent court (1) gravely abused its discretion in giving due course to the petition for review notwithstanding the fact that the decision sought to be reviewed had already become final and executory; and (2) gravely erred in holding that "the instant petition must be resolved on the all important issue of priority of possession instead of the issue as to who is the legal possessor of the lot subject of the litigation."[9]

Concordant with the claim of private respondent, the respondent court found the following relevant facts established by the evidence of record:

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[6] *Rollo*, 7-8.

[7] *Ibid.*, 46.

[8] *Ibid.*, 65-66.

[9] *Ibid.*, 13, 16.

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"On August 16, 1961, Ordinary Residence Permit No. 1675 was issued by the Bureau of Forestry authorizing the petitioner to occupy four hectares of public forest land situated in Sitio Upper Kalaklan, Olongapo, Zambales (Exhibit A), on which he constructed a warehouse and a gasoline station pursuant to permits issued to him by the said bureau (Exhibits C, C-1, 1 and J), which on February 10, 1970 were declared for purposes of taxation in his name (Exhibits E and E-1) and taxes due thereon were paid (Exhibits F-4 and F-5).

"On January 19, 1977, the parcel of land in question, designated as Block V, LC Project No. 14, Olongapo City, BF Map LC 2427, containing an area of 42,086 square meters, covered by the sketch (Exhibit G), having been declared alienable and disposable, the petitioner filed an application with the Bureau of Lands to purchase it under Miscellaneous Sales Application No. (111-4) 9019 (Exhibit M).

"On March 1, 1980, the petitioner wrote to the respondent advising him to stop construction of the building that he was putting up within the parcel of land in question (Exhibit H).

On March 6, 1980, the respondent having refused to desist from constructing the building that he was putting up, the petitioner filed the instant complaint for forcible entry in the then City Court of Olongapo."[10]

We initially take up the first error imputed by petitioner which, although the records do not show that the same was raised in the petition for review in respondent court, deserves a corresponding resolution since it indirectly attributes a jurisdictional defect.

Petitioner claims that a copy of the decision of the Regional Trial Court of Olongapo City was sent by registered mail to the counsel of private respondent at his given address. However, the envelope was supposedly returned to the court when counsel for private respondent allegedly failed to claim the same after a second notice was made on July 10, 1985. Petitioner then contends that, pursuant to Section 3, Rule 13 of the Rules of Court, the decision of the regional trial court became final on July 15, 1985, private respondent not having seasonably filed either a motion for reconsideration or a notice of appeal.[11]

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[10] *Ibid.*, 36-37.

[11] *Ibid.*, 13-14.

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We are not persuaded by this argument belatedly raised by petitioner. It is incumbent upon a party who relies upon constructive service under Section 5 of Rule 13 of the Rules to prove that the first notice of the registered letter was sent and delivered to the addressee, as the presumption that official duty has been regularly performed does not apply to such a situation.[12] Here, the assertions in the petition of the facts stated in the next preceding paragraph are unsubstantiated. In the absence of such proof in the record, the disputable presumption of completeness of service does not arise. Furthermore, not only has petitioner failed in such requisite proof but, as earlier stated, the records do not show that such issue was raised or proved by him in the respondent court when the petition for review was filed with and was pending therein. The principle of estoppel by laches, which is in the interest of a sound administration of the laws, consequently bars this objection from being raised by petitioner for the first time and at this late stage.[13]

It is next alleged that respondent court gravely erred in adjudicating the case on the basis of priority of physical possession instead of legal possession.

As already adumbrated, respondent court held that private respondent was granted a residence permit over a lot with an area of 42,086 square meters by the Bureau of Forestry on August 16, 1961, and a permit to construct a warehouse and gasoline station thereon by the then municipal government of Olongapo on October 1, 1963.[14] This residence permit, which was renewable every year, was not renewed after June 30, 1969 because it was stopped by then Vice-President Fernando Lopez, although private respondent continued to pay rental fees for the land until 1973.[15] Upon application by private respondent,

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[12] *Barrameda vs. Castillo*, 78 SCRA 4 (1977).

[13] *Tijam, et al. vs. Sibonghanoy, et al.*, 23 SCRA 29 (1968); *Crisostomo, et al. vs. Court of Appeals, et al.*, 32 SCRA 54 (1970); *Libudan vs. Gil, et al.*, 45 SCRA 17 (1972).

[14] *Rollo*, 25.

[15] *Ibid.*, 26, 28.

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the said lot was declared alienable and disposable public land released by the Bureau of Forest Development to the Bureau of Lands in March, 1973. Thereafter, he filed a Miscellaneous Sales Application with the Bureau of Lands on January 19, 1977 for the purchase of the said lot.[16] It likewise appears that private respondent declared the warehouse and gasoline station for taxation purposes and paid taxes thereon in 1970 and 1971.[17]

On the other hand, petitioner claims that he entered into and took possession of the contested lot in 1970 pursuant to a permit granted to him by the Bureau of Forest Development, as supposedly evidenced by a certification from the latter dated April 10, 1979,[18] and a building permit and sanitary/plumbing permit issued for the construction of his house thereon.[19] This is an egregious inaccuracy as aptly observed by respondent court, thus:

"Said permits (Annexes A, B and C to answer) were not actually introduced in evidence by the respondent Elane in support of his allegations and defenses. They may not, therefore, be considered at all as evidence. Besides, the certification (Annex A to answer) do (*sic*) not attest to the issuance of any permit to occupy the parcel of land in question in favor of the respondent Elane. It merely certified to the fact that the parcel of land in question 'was found to be Alienable and Disposable Land.' And the building and sanitary/plumbing permits (Annexes B and C to answer) could not have established his possession of the parcel of land since 1970 because aside from the fact that they bear no date of actual issuance, they were accomplished by the applicant whose residence certificate appears to have been issued only on January 5, 1979. How then can it be correctly concluded that based upon such certification and permits (Annexes A, B and C to answer), the respondent Elane had entered into and had taken possession of the parcel of land in question since 1970?

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[16] Exhibit M; *Rollo*, 37.

[17] Exhibits E and E-1, F to F-6; *Rollo*, 38.

[18] Annex A, Answer in Civil Case No. 1959; *Rollo*, 44.

[19] Annexes B and C, *Ibid*; *Ibid*.

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"Moreover, the survey of the parcel of land in question was prepared for the respondent Elane only on February 25, 1979 (Exhibit 6). His miscellaneous sales application was filed in the Bureau of Lands only on March 26, 1979 (Exhibit 7). The lot and residential building constructed thereon were declared for purposes of taxation only on October 18, 1979 and April 1, 1981 (Exhibits 4-A and 5). The realty taxes due for 1970-73, 1974-78 and 1979 (Exhibit 8) and those due for the succeeding years were paid only on April 14, 1980, May 8, 1981 and March 16, 1982 (Exhibits 8-1 to 8-5). Respondent Elane's possession based on those documents cannot, therefore retroact as of 1970."[20]

Under these circumstances, We are convinced that private respondent has priority of possession over petitioner whose entry into the subject lot may be reckoned only as of 1979. There is no merit in the suggestion that petitioner was authorized by the Bureau of Forest Development to occupy the land by virtue of an alleged permit issued by said bureau. A cursory examination of said document readily shows that it is a mere certification that the lot claimed by petitioner is part of the alienable and disposable land of the public domain. Nowhere is it stated therein that petitioner is allowed to take possession of the subject lot. Furthermore, it is uncontroverted that private respondent was issued a residence permit way back in 1961 which entitled him to possession of the disputed land starting in the same year.

Petitioner, however, submits that the expiration of private respondent's permit in 1969, and its non-renewal, deprived the latter of his possessory right over and the corresponding right to eject petitioner from the subject lot. Petitioner argues that by reason of the expiration of said permit, the right of possession over the land reverted to the Bureau of Lands thereby vesting in said entity the sole right to institute any forcible entry case over the land in question.

We likewise reject this submission.

The respondent court expressly observed that while private respondent's permit to occupy the land may have expired in

[20] *Ibid.*, 44-45.

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1969, he remained in physical possession thereof. Since the decisive issue is priority of possession and private respondent had been in actual and continuous possession of the land since August 16, 1961, his material possession must be protected in this ejectment case until a competent court in an appropriate case determines which of the contending parties has the better right of possession.[21]

As tersely emphasized by respondent court, and correctly so, "it is of no moment that petitioner's right to occupy said parcel of land by reason of the permit issued to him by the Bureau of Forestry has already expired. For, it is not whether he has a legal right to possess it that is in issue; it is whether he is in actual physical possession of it that is decisive in the instant case for forcible entry."[22]

In sum, private respondent was in earlier possession of the contested lot; his sales application preceded that of petitioner; his warehouse and gasoline station already existed long before petitioner took possession of the parcel of land in question; and he has been paying taxes and rental fees thereon since 1968. As provided by the Civil Code —

"Art. 538. Possession as a fact cannot be recognized at the same time in two different personalities except in the case of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessors, the one longer in possession; x x x."

Having been in prior continuous possession, private respondent is preferentially entitled to occupy the land.

Petitioner's intrusion upon the disputed premises can properly be categorized as one effected through stealth. Where forcible entry was thus made clandestinely, the one-year prescriptive period should be counted from the time private respondent demanded that the deforciant desist from such dispossession

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[21] *Ibid.*, 43.

[22] *Ibid., Ibid.*; see *Mediran vs. Villanueva, et al.*, 37 Phil. 752 (1918).

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when the former learned thereof.[23] The records reflect that such discovery and prohibition took place on February 15, 1980, reiterated thereafter in the demand letter of March 1, 1980, both to no avail. Consequently, the one-year period had not expired on March 6, 1980 when private respondent filed the ejectment suit with the then City Court of Olongapo City.

WHEREFORE, the judgment appealed from is hereby *AFFIRMED in toto*, without pronouncement as to costs.

SO ORDERED.

Melencio-Herrera (Chairman), Paras, Padilla, and *Sarmiento, JJ.*, concur.

THIRD DIVISION

[G.R. No. 81471. April 26, 1989]

CHONG GUAN TRADING, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and JOSE M. CHUA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; APPEALS FROM LABOR ARBITER TO NATIONAL LABOR RELATIONS COMMISSION; REGLEMENTARY PERIOD THEREOF; CONSTRUED AS "CALENDAR" DAYS. — Article 223 of the Labor Code [Pres. Decree 442, as amended] provides for a reglementary period of ten (10) days within which to appeal a decision of the labor arbiter to the NLRC. The ten-day period

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[23] *Vda. de Prieto vs. Reyes*, 14 SCRA 430 (1965); *City of Manila vs. Garcia, et al.*, 19 SCRA 413 (1967).