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SECOND DIVISION

[G.R. No. 131282. January 4, 2002]

GABRIEL L. DUERO, *petitioner, vs.* **HON. COURT OF APPEALS, and BERNARDO A. ERADEL,** *respondents.*

SYNOPSIS

In a complaint for Recovery of Possession and Ownership filed by petitioner Gabriel L. Duero against private respondent Bernardo A. Eradel and two others, private respondent was declared in default for failure to file his answer. As a consequence, judgment was rendered in favor of the petitioner. Private respondent filed a Motion for New Trial, but was denied by the trial court. Subsequently, he filed a Petition for Relief from Judgment based on the same ground as in his motion for new trial. But the said petition was denied by the trial court. In a motion for reconsideration, he alleged that the Regional Trial Court (RTC) had no jurisdiction over the case since the value of the land was only ₱5,240. Again, it was denied by the trial court. Private respondent filed a Petition for *Certiorari* before the Court of Appeals. The appellate court gave due course to the petition by maintaining that private respondent was not estopped from assailing the jurisdiction of the RTC. Hence, this petition.

The Court could not fault the Court of Appeals in overruling the RTC. The fundamental rule is that, the lack of jurisdiction of the court over an action cannot be waived by the parties, or even cured by their silence, acquiescence or even by their express consent. Even if private respondent actively participated in the proceedings before said court, the doctrine of estoppel cannot be properly invoked against him because the question of lack of jurisdiction may be raised at anytime and at any stage of the action.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; XEROX COPIES ARE WITHOUT EVIDENTIARY VALUE. — Petitioner through counsel submitted to this Court pleadings

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that contain inaccurate statements. Thus, on page 5 of his petition, we find that to bolster the claim that the appellate court erred in holding that the RTC had no jurisdiction, petitioner pointed to *Annex E* of his petition which supposedly is the Certification issued by the Municipal Treasurer of San Miguel, Surigao, specifically containing the notation, "Note: Subject for General Revision Effective 1994." But it appears that *Annex E* of his petition is not a Certification but a xerox copy of a Declaration of Real Property. Nowhere does the document contain a notation, "Note: Subject for General Revision Effective 1994." Petitioner also asked this Court to refer to *Annex F,* where he said the zonal value of the disputed land was ₱1,40 per sq.m., thus placing the computed value of the land at the time the complaint was filed before the RTC at ₱57,113.98, hence beyond the jurisdiction of the municipal court and within the jurisdiction of the regional trial court. However, we find that these annexes are both merely xerox copies. They are obviously without evidentiary weight or value.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED.** — By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or a lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

3. **ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.** — But here we find that in its decision holding that the municipal court has jurisdiction over the case and that private respondent was not estopped from questioning the jurisdiction of the RTC, respondent Court of Appeals discussed the facts on which its decision is grounded as well as the law and jurisprudence on the matter. Its action was neither whimsical nor capricious.

4. **REMEDIAL LAW; JURISDICTION; DOCTRINE OF ESTOPPEL; AN EQUITABLE DEFENSE THAT IS BOTH SUBSTANTIVE AND REMEDIAL.** — While participation in all stages of a case before the trial court, including invocation of its authority in asking for affirmative relief, effectively bars a party by estoppel from challenging the court's jurisdiction, we note that estoppel

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has become an equitable defense that is both substantive and remedial and its successful invocation can bar a right and not merely its equitable enforcement. Hence, estoppel ought to be applied with caution. For estoppel to apply, the action giving rise thereto must be unequivocal and intentional because, if misapplied, estoppel may become a tool of injustice.

5. **ID.; ID.; ID.; NOT APPLICABLE IN CASE AT BAR.** — In the present case, private respondent questions the jurisdiction of RTC in Tandag, Surigao del Sur, on legal grounds. Recall that it was petitioner who filed the complaint against private respondent and two other parties before the said court, believing that the RTC had jurisdiction over his complaint. But by then, Republic Act 7691 amending BP 129 had become effective, such that jurisdiction already belongs not to the RTC but to the MTC pursuant to said amendment. x x x Note that private respondent raised the issue of lack of jurisdiction, not when the case was already on appeal, but when the case was still before the RTC that ruled him in default, denied his motion for new trial as well as for relief from judgment, and denied likewise his two motions for reconsideration. After the RTC still refused to reconsider the denial of private respondent's motion for relief from judgment, it went on to issue the order for entry of judgment and a writ of execution. Under these circumstances, we could not fault the Court of Appeals in overruling the RTC and in holding that private respondent was not estopped from questioning the jurisdiction of the regional trial court.

6. **ID.; ID.; ID.; APPLICABLE IN EXCEPTIONAL CASES ONLY; NOT PRESENT IN CASE AT BAR.** — In holding that estoppel did not prevent private respondent from questioning the RTC's jurisdiction, the appellate court reiterated the doctrine that estoppel must be applied only in exceptional cases, as its misapplication could result in a miscarriage of justice. Here, we find that petitioner, who claims ownership of a parcel of land, filed his complaint before a court without appropriate jurisdiction. Defendant, a farmer whose tenancy status is still pending before the proper administrative agency concerned, could have moved for dismissal of the case on jurisdictional grounds. But the farmer as defendant therein could not be expected to know the nuances of jurisdiction and related issues. This farmer, who is now the private respondent, ought not to be penalized when he claims that he made an honest mistake

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when he initially submitted his motions before the RTC, before he realized that the controversy was outside the RTC's cognizance but within the jurisdiction of the municipal trial court. To hold him in estoppel as the RTC did would amount to foreclosing his avenue to obtain a proper resolution of his case. Furthermore, if the RTC's order were to be sustained, he would be evicted from the land prematurely, while RED Conflict Case No. 1029 would remain unresolved. Such eviction on a technicality if allowed could result in an injustice, if it is later found that he has a legal right to till the land he now occupies as tenant-lessee.

7. **ID.; ID.; NOT A QUESTION OF ACQUIESCENCE AS A MATTER OF FACT BUT AN ISSUE OF CONFERMENT AS A MATTER OF LAW.** — The fundamental rule is that, the lack of jurisdiction of the court over an action cannot be waived by the parties, or even cured by their silence, acquiescence or even by their express consent. Further, a party may assail the jurisdiction of the court over the action at any stage of the proceedings and even on appeal. The appellate court did not err in saying that the RTC should have declared itself barren of jurisdiction over the action. Even if private respondent actively participated in the proceedings before said court, the doctrine of estoppel cannot still be properly invoked against him because the question of lack of jurisdiction may be raised at anytime and at any stage of the action. Precedents tell us that as a general rule, the jurisdiction of a court is not a question of acquiescence as a matter of fact, but an issue of conferment as a matter of law. Also, neither waiver nor estoppel shall apply to confer jurisdiction upon a court, barring highly meritorious and exceptional circumstances.

8. **ID.; CIVIL PROCEDURE; JUDGMENT; DECISION OF A COURT WITHOUT JURISDICTION IS NULL AND VOID.** — Indeed, "...the trial court was duty-bound to take judicial notice of the parameters of its jurisdiction and its failure to do so, makes its decision a 'lawless' thing." Since a decision of a court without jurisdiction is null and void, it could logically never become final and executory, hence appeal therefrom by writ of error would be out of the question. Resort by private respondent to a petition for *certiorari* before the Court of Appeals was in order.

9. **ID.; ID.; PLEADINGS; IF THE COURT HAS NO JURISDICTION OVER THE CASE, DEFENDANT HAS JUSTIFIABLE REASON**

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NOT TO FILE AN ANSWER. — Suffice it to say that, given the circumstances in this case, no error was committed on this score by respondent appellate court. Since the RTC had no jurisdiction over the case, private respondent had justifiable reason in law not to file an answer, aside from the fact that he believed the suit was properly his landlord's concern.

APPEARANCES OF COUNSEL

Sua & Alambra Law Offices for petitioner.
Gerardo M. Maglinte for private respondent.

DECISION

QUISUMBING, *J.*:

This petition for *certiorari* assails the Decision[1] dated September 17, 1997, of the Court of Appeals in CA-G.R. No. SP No. 2340-UDK, entitled *Bernardo Eradel vs. Hon. Ermelino G. Andal,* setting aside all proceedings in Civil Case No. 1075, *Gabriel L. Duero vs. Bernardo Eradel,* before the Branch 27 of the Regional Trial Court of Tandag, Surigao del Sur.

The pertinent facts are as follows:

Sometime in 1988, according to petitioner, private respondent Bernardo Eradel[2] entered and occupied petitioner's land covered by Tax Declaration No. A-16-13-302, located in Baras, San Miguel, Surigao del Sur. As shown in the tax declaration, the land had an assessed value of ₱5,240. When petitioner politely informed private respondent that the land was his and requested the latter to vacate the land, private respondent refused, but instead threatened him with bodily harm. Despite repeated demands, private respondent remained steadfast in his refusal to leave the land.

On June 16, 1995, petitioner filed before the RTC a complaint for Recovery of Possession and Ownership with Damages and

[1] *Rollo*, pp. 13-27.

[2] Bernardo Kradel in the CA Decision, *Rollo*, p. 13.

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Attorney's Fees against private respondent and two others, namely, Apolinario and Inocencio Ruena. Petitioner appended to the complaint the aforementioned tax declaration. The counsel of the Ruenas asked for extension to file their Answer and was given until July 18, 1995. Meanwhile, petitioner and the Ruenas executed a compromise agreement, which became the trial court's basis for a partial judgment rendered on January 12, 1996. In this agreement, the Ruenas through their counsel, Atty. Eusebio Avila, entered into a Compromise Agreement with herein petitioner, Gabriel Duero. *Inter alia*, the agreement stated that the Ruenas recognized and bound themselves to respect the ownership and possession of Duero.[3] Herein private respondent Eradel was not a party to the agreement, and he was declared in default for failure to file his answer to the complaint.[4]

Petitioner presented his evidence *ex parte* on February 13, 1996. On May 8, 1996, judgment was rendered in his favor, and private respondent was ordered to peacefully vacate and turn over Lot No. 1065 Cad. 537-D to petitioner; pay petitioner ₱2,000 annual rental from 1988 up the time he vacates the land, and ₱5,000 as attorney's fees and the cost of the suit.[5] Private respondent received a copy of the decision on May 25, 1996.

On June 10, 1996, private respondent filed a Motion for New Trial, alleging that he has been occupying the land as a tenant of Artemio Laurente, Sr., since 1958. He explained that he turned over the complaint and summons to Laurente in the honest belief that as landlord, the latter had a better right to the land and was responsible to defend any adverse claim on it. However, the trial court denied the motion for new trial.

Meanwhile, RED Conflict Case No. 1029, an administrative case between petitioner and applicant-contestants Romeo,

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[3] Records, p. 24.

[4] *Id.* at 29.

[5] *Rollo*, pp. 15-16.

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Artemio and Jury Laurente, remained pending with the Office of the Regional Director of the Department of Environment and Natural Resources in Davao City. Eventually, it was forwarded to the DENR Regional Office in Prosperidad, Agusan del Sur.

On July 24, 1996, private respondent filed before the RTC a Petition for Relief from Judgment, reiterating the same allegation in his Motion for New Trial. He averred that unless there is a determination on who owned the land, he could not be made to vacate the land. He also averred that the judgment of the trial court was void inasmuch as the heirs of Artemio Laurente, Sr., who are indispensable parties, were not impleaded.

On September 24, 1996, Josephine, Ana Soledad and Virginia, all surnamed Laurente, grandchildren of Artemio who were claiming ownership of the land, filed a Motion for Intervention. The RTC denied the motion.

On October 8, 1996, the trial court issued an order denying the Petition for Relief from Judgment. In a Motion for Reconsideration of said order, private respondent alleged that the RTC had no jurisdiction over the case, since the value of the land was only ₱5,240 and therefore it was under the jurisdiction of the municipal trial court. On November 22, 1996, the RTC denied the motion for reconsideration.

On January 22, 1997, petitioner filed a Motion for Execution, which the RTC granted on January 28. On February 18, 1997, Entry of Judgment was made of record and a writ of execution was issued by the RTC on February 27, 1997. On March 12, 1997, private respondent filed his petition for *certiorari* before the Court of Appeals.

The Court of Appeals gave due course to the petition, maintaining that private respondent is not estopped from assailing the jurisdiction of the RTC, Branch 27 in Tandag, Surigao del Sur, when private respondent filed with said court his Motion for Reconsideration And/Or Annulment of Judgment. The Court of Appeals decreed as follows:

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IN THE LIGHT OF ALL THE FOREGOING, the Petition is GRANTED. All proceedings in "*Gabriel L. Duero vs. Bernardo Eradel, et. al.* Civil Case 1075" filed in the Court *a quo*, including its Decision, *Annex "E"* of the petition, and its Orders and Writ of Execution and the turn over of the property to the Private Respondent by the Sheriff of the Court *a quo*, are declared null and void and hereby SET ASIDE, No pronouncement as to costs.

SO ORDERED.[6]

Petitioner now comes before this Court, alleging that the Court of Appeals acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it held that:

I.

... THE LOWER COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

II

... PRIVATE RESPONDENT WAS NOT THEREBY ESTOPPED FROM QUESTIONING THE JURISDICTION OF THE LOWER COURT EVEN AFTER IT SUCCESSFULLY SOUGHT AFFIRMATIVE RELIEF THEREFROM.

III

... THE FAILURE OF PRIVATE RESPONDENT TO FILE HIS ANSWER IS JUSTIFIED.[7]

The main issue before us is whether the Court of Appeals gravely abused its discretion when it held that the municipal trial court had jurisdiction, and that private respondent was not estopped from assailing the jurisdiction of the RTC after he had filed several motions before it. The secondary issue is whether the Court of Appeals erred in holding that private respondent's failure to file an answer to the complaint was justified.

At the outset, however, we note that petitioner through counsel submitted to this Court pleadings that contain inaccurate

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[6] *Id.* at 26.

[7] *Id.* at 6.

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statements. Thus, on page 5 of his petition,[8] we find that to bolster the claim that the appellate court erred in holding that the RTC had no jurisdiction, petitioner pointed to *Annex E*[9] of his petition which supposedly is the Certification issued by the Municipal Treasurer of San Miguel, Surigao, specifically containing the notation, "Note: Subject for General Revision Effective 1994." But it appears that *Annex E* of his petition is not a Certification but a xerox copy of a Declaration of Real Property. Nowhere does the document contain a notation, "Note: Subject for General Revision Effective 1994." Petitioner also asked this Court to refer to *Annex F,*[10] where he said the zonal value of the disputed land was ₱1.40 per sq.m., thus placing the computed value of the land at the time the complaint was filed before the RTC at ₱57,113.98, hence beyond the jurisdiction of the municipal court and within the jurisdiction of the regional trial court. However, we find that these annexes are both merely xerox copies. They are obviously without evidentiary weight or value.

Coming now to the principal issue, petitioner contends that respondent appellate court acted with grave abuse of discretion. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or a lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[11] But here we find that in its decision holding that the municipal court has jurisdiction over the case and that private respondent was not estopped from questioning the jurisdiction of the RTC, respondent Court of Appeals discussed the facts on which its decision is grounded as well as the law and

[8] *Id.* at 7.

[9] *Id.* at 40.

[10] *Id.* at 41.

[11] *Cuison vs. Court of Appeals,* G.R. No. 128540, 289 SCRA 159, 177 (1998).

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jurisprudence on the matter.[12] Its action was neither whimsical nor capricious.

Was private respondent estopped from questioning the jurisdiction of the RTC? In this case, we are in agreement with the Court of Appeals that he was not. While participation in all stages of a case before the trial court, including invocation of its authority in asking for affirmative relief, effectively bars a party by estoppel from challenging the court's jurisdiction,[13] we note that estoppel has become an equitable defense that is both substantive and remedial and its successful invocation can bar a right and not merely its equitable enforcement.[14] Hence, estoppel ought to be applied with caution. For estoppel to apply, the action giving rise thereto must be unequivocal and intentional because, if misapplied, estoppel may become a tool of injustice.[15]

In the present case, private respondent questions the jurisdiction of RTC in Tandag, Surigao del Sur, on legal grounds. Recall that it was petitioner who filed the complaint against private respondent and two other parties before the said court,[16] believing that the RTC had jurisdiction over his complaint. But by then, Republic Act 7691[17] amending BP 129 had become effective,

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[12] *Rollo*, pp. 23-25.

[13] *PNOC Shipping and Transport Corporation vs. Court of Appeals*, G.R. No. 107518, 297 SCRA 402, 428 (1998).

[14] *Philippine Bank of Communication vs. Court of Appeals*, G.R. No. 109803, 289 SCRA 178, 185 (1998).

[15] *La Naval Drugs Corporation vs Court of Appeals, et al.*, G.R. No. 103200, 236 SCRA 78, 87-88, (1994).

[16] Records. pp. 1-5.

[17] SEC. 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases.*— Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed

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such that jurisdiction already belongs not to the RTC but to the MTC pursuant to said amendment. Private respondent, an unschooled farmer, in the mistaken belief that since he was merely a tenant of the late Artemio Laurente Sr., his landlord, gave the summons to a Hipolito Laurente, one of the surviving heirs of Artemio Sr., who did not do anything about the summons. For failure to answer the complaint, private respondent was declared in default. He then filed a Motion for New Trial in the same court and explained that he defaulted because of his belief that the suit ought to be answered by his landlord. In that motion he stated that he had by then the evidence to prove that he had a better right than petitioner over the land because of his long, continuous and uninterrupted possession as *bona-fide* tenant-lessee of the land.[18] But his motion was denied. He tried an alternative recourse. He filed before the RTC a Motion for Relief from Judgment. Again, the same court denied his motion, hence he moved for reconsideration of the denial. In his Motion for Reconsideration, he raised for the first time the RTC's lack of jurisdiction. This motion was again denied. Note that private respondent raised the issue of lack of jurisdiction, not when the case was already on appeal, but when the case was still before the RTC that ruled him in default, denied his motion for new trial as well as for relief from judgment, and denied likewise his two motions for reconsideration. After the RTC still refused to reconsider the denial of private respondent's motion for relief from judgment, it went on to issue the order for entry of judgment and a writ of execution.

Under these circumstances, we could not fault the Court of Appeals in overruling the RTC and in holding that private

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value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: *Provided,* That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

[18] *Id.* at 65-66.

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respondent was not estopped from questioning the jurisdiction of the regional trial court. The fundamental rule is that, the lack of jurisdiction of the court over an action cannot be waived by the parties, or even cured by their silence, acquiescence or even by their express consent.[19] Further, a party may assail the jurisdiction of the court over the action at any stage of the proceedings and even on appeal.[20] The appellate court did not err in saying that the RTC should have declared itself barren of jurisdiction over the action. Even if private respondent actively participated in the proceedings before said court, the doctrine of estoppel cannot still be properly invoked against him because the question of lack of jurisdiction may be raised at anytime and at any stage of the action.[21] Precedents tell us that as a general rule, the jurisdiction of a court is not a question of acquiescence as a matter of fact, but an issue of conferment as a matter of law.[22] Also, neither waiver nor estoppel shall apply to confer jurisdiction upon a court, barring highly meritorious and exceptional circumstances.[23] The Court of Appeals found support for its ruling in our decision in *Javier vs. Court of Appeals,* thus:

> x x x The point simply is that when a party commits error in filing his suit or proceeding in a court that lacks jurisdiction to take cognizance of the same, such act may not at once be deemed sufficient basis of estoppel. It could have been the result of an honest mistake,

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[19] *Republic vs. Court of Appeals, et al.,* G.R. No. L-31303-04, 83 SCRA 453, 475 (1978).

[20] *De Leon vs. Court of Appeals, et al.,* G.R. No. 96107, 245 SCRA 166,172 (1995).

[21] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) upon a written contract

(2) Upon an obligation created by law

(3) Upon a judgment. (n)

[22] *Fabian vs. Desierto*, G.R. No. 129742, 295 SCRA 470, 488 (1998).

[23] *Asset Privatization Trust vs. Court of Appeals*, G.R. No. 121171, 300 SCRA 579, 599 (1998).

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or of divergent interpretations of doubtful legal provisions. *If any fault is to be imputed to a party taking such course of action, part of the blame should be placed on the court which shall entertain the suit, thereby lulling the parties into believing that they pursued their remedies in the correct forum.* Under the rules, it is the duty of the court to dismiss an action 'whenever it appears that the court has no jurisdiction over the subject matter.' (Sec. 2, Rule 9, Rules of Court) Should the Court render a judgment without jurisdiction, such judgment may be impeached or annulled for lack of jurisdiction (Sec. 30, Rule 132, *Ibid*), within ten (10) years from the finality of the same. [Italics supplied][24]

Indeed, "...the trial court was duty-bound to take judicial notice of the parameters of its jurisdiction and its failure to do so, makes its decision a 'lawless' thing."[25]

Since a decision of a court without jurisdiction is null and void, it could logically never become final and executory, hence appeal therefrom by writ of error would be out of the question. Resort by private respondent to a petition for *certiorari* before the Court of Appeals was in order.

In holding that estoppel did not prevent private respondent from questioning the RTC's jurisdiction, the appellate court reiterated the doctrine that estoppel must be applied only in exceptional cases, as its misapplication could result in a miscarriage of justice. Here, we find that petitioner, who claims ownership of a parcel of land, filed his complaint before a court without appropriate jurisdiction. Defendant, a farmer whose tenancy status is still pending before the proper administrative agency concerned, could have moved for dismissal of the case on jurisdictional grounds. But the farmer as defendant therein could not be expected to know the nuances of jurisdiction and related issues. This farmer, who is now the private respondent, ought not to be penalized when he claims that he made an honest mistake when he initially submitted his motions before the RTC, before he realized that the controversy was outside

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[24] G.R. No. 96617, 214 SCRA 572, 577 (1992); *Rollo*, pp. 25-26.

[25] *Rollo*, p. 20.

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the RTC's cognizance but within the jurisdiction of the municipal trial court. To hold him in estoppel as the RTC did would amount to foreclosing his avenue to obtain a proper resolution of his case. Furthermore, if the RTC's order were to be sustained, he would be evicted from the land prematurely, while RED Conflict Case No. 1029 would remain unresolved. Such eviction on a technicality if allowed could result in an injustice, if it is later found that he has a legal right to till the land he now occupies as tenant-lessee.

Having determined that there was no grave abuse of discretion by the appellate court in ruling that private respondent was not estopped from questioning the jurisdiction of the RTC, we need not tarry to consider in detail the second issue. Suffice it to say that, given the circumstances in this case, no error was committed on this score by respondent appellate court. Since the RTC had no jurisdiction over the case, private respondent had justifiable reason in law not to file an answer, aside from the fact that he believed the suit was properly his landlord's concern.

WHEREFORE, the petition is *DISMISSED.* The assailed decision of the Court of Appeals is *AFFIRMED.* The decision of the Regional Trial Court in Civil Case No. 1075 entitled *Gabriel L. Duero vs. Bernardo Eradel,* its Order that private respondent turn over the disputed land to petitioner, and the Writ of Execution it issued, are *ANNULLED* and *SET ASIDE.* Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and *De Leon, Jr., JJ.,* concur.

Buena, J., on official leave.