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Cases Nos. 10499, 10500, 10502 and 10503, entitled "*People of the Philippines vs. Francisco S. Tatad*" are hereby DISMISSED. The temporary restraining order issued on October 22, 1985 is made permanent.

SO ORDERED.

Teehankee, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and *Griño-Aquino, JJ.*, concur.

SECOND DIVISION

[G.R. No. 73380. March 21, 1988]

MARTE SACLOLO, *petitioner, vs.* **HONORABLE INTERMEDIATE APPELLATE COURT and ELEUTERIO PEREA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT.**— It has been held that a complaint for forcible entry, in order to fall within the jurisdiction of inferior courts, must allege plaintiff's prior physical possession of the property, as well as the fact that he was deprived of such possession by any of the means provided in Section 1, Rule 70 of the Rules of Court. The bare allegation in the complaint that plaintiff was "deprived" of the possession of the land in dispute has been held to be insufficient.

2. **ID.;SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; REMEDY AGAINST A PARTY WHO REFUSES TO VACATE POSSESSION OF PROPERTY BY TOLERANCE.**— Petitioner claims further that before the

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purchase of said land from the Bureau of Lands, private respondent's possession of the same was that of a squatter and with the tolerance only of the government. After the purchase, the continuance of the possession of the same by private respondent was also by tolerance impliedly given by the petitioner to private respondent, so that upon demand to vacate the same, the failure and refusal of private respondent constitute an unlawful detainer of the land in question. Such contention is completely impressed with merit.

APPEARANCES OF COUNSEL

J.P. Dominguez for petitioner.
Enrique A. Wakay for private respondent.

D E C I S I O N

PARAS, *J.*:

This is an appeal by *certiorari* from the decision[1] of the then Intermediate Appellate Court, in AC-G.R. SP No. 04070, sustaining the decision[2] of the Regional Trial Court, Branch XV, Trece Martires City, which set aside the appealed decision[3] of the Municipal Trial Court of Naic, Cavite, in Civil Case No. 384, and declared null and void all the proceedings in the ejectment case on the ground of lack of jurisdiction.

The subject matter of the controversy is a portion of Lot No. 6001 SWO-000405 of the Naic Friar Lands Estate, located at Naic, Cavite. Thru Sales Certificate No. V-345 issued by the Director of Lands on August 22, 1979, petitioner Marte Saclolo obtained TCT No. T-114636 from the Register of Deeds of the Province of Cavite (*Rollo*, p. 45). Petitioner also declared for taxation the land in dispute so that tax declaration No. 8153 was issued in his name (*Ibid.*).

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[1] Penned by Justice Fidel P. Purisima concurred in by Justices Carolina C. Griño-Aquino and Vicente Mendoza.

[2] Written by Judge Alfredo J. Gustilo.

[3] Written by Judge Manuel C. Diosomito.

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In a registered letter dated September 26, 1979, petitioner gave private respondent a period of time within to vacate the lot in dispute, but the latter refused so that upon the expiration of the period, the former filed on October 13, 1979 an action for forcible entry.

In his complaint petitioner alleged, *inter alia* that sometime in August, 1979, private respondent together with five (5) other persons impleaded as co-defendants[4] were ejected from Lot No. 1023 of the Naic Friar Lands; that through "force, intimidation, threat, strategy or stealth" they entered the lot in dispute and constructed their respective shacks, thereby, depriving petitioner of his possession thereof to his damage and prejudice; *that despite written and oral demands they failed and refused* to vacate the land in dispute. By way of relief, petitioner prayed that the defendants be ordered to vacate the land and to pay the sum of ₱2,000.00 per annum as damages as well as ₱1,000.00 as attorney's fees, plus costs (*Rollo*, pp. 39,40).

On December 24, 1979, the complaint was amended to implead two (2) additional defendants (Ciriaco Beijande and Antonio Nuestro), to add in the title of the complaint the words "or unlawful detainer" after "forcible entry," and to incorporate a detailed description of the land in dispute (*Rollo*, p. 56).

In his Answer dated January 14, 1979, private respondent Eleuterio Perea, controverted the complaint and alleged, among other things, that contrary to petitioners' claim, he did not enter the disputed land in August, 1979 as he had been occupying a portion of the land since 1958; that thru fraudulent misrepresentation, petitioner persuaded the Bureau of Lands to sell to him the lot in question; that because of the malicious filing of the complaint he was constrained to spend ₱2,000.00 for attorney's fees and ₱150.00 per appearance for his consel. As relief, he prayed for the dismissal of the complaint, the payment of attorney's fees including appearance fees as well as moral and exemplary damages.

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[4] Raymundo Beijande, Domingo Sanchez, Renato Sanchez, Eleuterio Marasigan, Rodrigo Beijande.

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The other defendants did not file their Answer. Upon petitioner's motion they were declared in default on November 24, 1980. An *ex-parte* presentation of petitioner's evidence ensued, after which, partial judgment was rendered on June 22, 1981, against the defaulting defendants (*Rollo*, p. 57).

As regards respondent Perea (who was not in default) he was allowed to cross-examine petitioner and to offer his evidence. After hearing, judgment was rendered on September 14, 1983 by the Municipal Trial Court, Naic, Cavite, the dispositive portion of which provides as follows, viz:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the defendant and all those residing on the land under him, or at his authority, to vacate the land in question after the finality of this decision; to pay plaintiff the sum of ₱20.00 rental per month from October 23, 1979 until they finally vacate the land in question; to pay the plaintiff the sum of ₱500.00, as and for attorney's fees; and to pay the costs. The counterclaim of the defendant is hereby dismissed for lack of merit."

The above ruling was anchored on the finding of the trial court that petitioner is the owner of the land in dispute, and as such, has the right of action against the possessor to recover it. Likewise, it ruled that the absence of tenancy relation is inconsequential as respondent Perea is considered a "tenant by tolerance" after petitioner acquired the land, hence, the former is obligated to vacate the land upon demand.

Respondent Perea interposed an appeal to the Regional Trial Court, Branch XV, Trece Martires City. After the parties had submitted their respective memoranda, judgment was rendered on June 29, 1984 nullifying all the proceedings in the lower court on the ground of lack of jurisdiction. The dispositive portion of said decision reads:

"IN VIEW OF THE FOREGOING, the decision dated September 14, 1983 of the Municipal Trial Court of Naic, Cavite, in Civil Case No. 384 is hereby set aside and all proceedings had therein are hereby declared null and void."

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For the Regional Trial Court, the case is neither an action for forcible entry nor an unlawful detainer, but an *accion publiciana* within its exclusive jurisdiction. The decision was based on its finding that there is no allegation of petitioner's prior physical possession in the complaint nor allegations that respondent Perea is unlawfully withholding possession of the property after the termination of an express or implied contract. The court also noted the absence of petitioner's evidence on the existence of tenancy relation, the issue of possession, as well as the failure of petitioner to substantiate his claim that respondent Perea used force, intimidation, threat, strategy or stealth in entering a portion of the land in dispute.

Petitioner elevated the matter to the then Intermediate Appellate Court. The Appellate Court, however, reiterated the ruling of the Regional Trial Court that the Municipal Trial Court had no jurisdiction over the case, dismissed the petition for lack of merit and affirmed the judgment elevated for review (*Rollo*, p. 60). Petitioner then filed a motion for reconsideration but the same was denied. Hence, the present action.

On August 4, 1986, the Second Division of this Court, issued a resolution requiring respondent Perea to comment (*Rollo*, p. 75). In compliance therewith, respondent Perea filed his comment on December 8, 1986 (*Rollo*, p. 86).

On January 19, 1987, the Second Division of this Court, resolved to give due course to the petition, and required the parties to submit simultaneous memoranda (*Rollo*, p. 93). Respondent Perea filed his memorandum on February 26, 1987 (*Rollo*, p. 101), while petitioner's memorandum was filed on March 30, 1987 (Rollo, p. 117).

Cited as errors in the decision of the then Intermediate Appellate Court are the following, *viz*:

"1. That the Honorable Intermediate Appellate Court has gravely erred in considering that the action in the complaint is for forcible entry and in failing to see that the original action was amended and approved by the court as an unlawful detainer case against private respondent;

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2. That the Honorable Intermediate Appellate Court has gravely erred in failing to consider that the allegations of the amended complaint are sufficient to support the action for unlawful detainer, taking into account the liberal construction of the Rules of Court, especially when the evidences presented constitute the elements *for unlawful detainer;*

3. That the Honorable Intermediate Appellate Court had gravely erred in concluding that the Municipal Trial Court has no jurisdiction to hear the case of petitioner against private respondent since the proper action should be for recovery of possession;

4. That the Honorable Intermediate Appellate Court has, lastly, erred in not reversing the decision of the Regional Trial Court for not being in accordance with the facts and the law; and in not upholding the decision of the Municipal Trial Court on the action for unlawful detainer."

The only issue in this case is whether or not the case at bar is an action for forcible entry or unlawful detainer which properly falls within the jurisdiction of the Municipal Trial Court.

There is no question that Section 88 of R.A. 296 expressly confers upon the municipal court original jurisdiction to try and decide actions for forcible entry and unlawful detainer. The enactment on August 14, 1981 of Batas Pambansa Bilang 129 confers exclusive original jurisdiction on summary action for ejectment on the Metropolitan Trial Court, Municipal Trial Court and Municipal Circuit Trial Court (Section 33 par. (2) B.P. 129).

There is likewise no dispute that petitioner is the absolute *and registered owner of the property subject of this case by* virtue of a sales patent from the Bureau of Lands.

The crux of the issue however, is whether or not the essential elements of either Forcible Entry or Unlawful Detainer are present in this case.

It has been held that a complaint for forcible entry, in order to fall within the jurisdiction of inferior courts, must allege *plaintiff's prior physical possession of the property, as well as* the fact that he was deprived of such possession by any of the

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means provided in Section 1, Rule 70 of the Rules of Court (*Pasaqui, et al. v. Villablanca, et al.*, 68 SCRA 557, 562). The bare allegation in the complaint that plaintiff was "deprived" of the possession of the land in dispute has been held to be insufficient (*Gumiran, et al. v. Gumiran*, 21 Phil. 174).

In the instant case, it was correctly found by both the Regional Trial Court and the Intermediate Appellate Court (Court of Appeals) that there is no allegation in the complaint that petitioner had prior physical possession of the land in dispute. During the trial, petitioner presented evidence of his ownership but failed to show that he was in prior possession of the property in question before private respondent allegedly entered and occupied the same. Much less was he able to establish that private respondent used force, intimidation, threat, strategy or stealth in entering said property.

In fact, it will be noted, that petitioner practically abandoned his theory of forcible entry and maintained instead that whether private respondent entered the property in 1958 or in 1979 is immaterial. What is material and relevant is whether or not the amended complaint is sufficient to support a case of unlawful detainer (*Rollo*, p. 123).

On the other hand, private respondent claims that he had built his house in the same portion of the land in the concept of owner and had introduced improvements thereon since 1958. His testimony was corroborated by several witnesses and no contrary evidence was adduced by petitioner to refute the same. So much so that, after evaluating the evidences, testimonial and documentary, the municipal trial court reiterated its Order dated July 19, 1982, that the action in this case is one for unlawful detainer (Decision, Civil Case No. 384; *Rollo*, pp. 45; 105-107).

Petitioner insists that private respondent is considered a tenant by tolerance from which it can be implied that he would vacate the premises on demand. Petitioner testified that he sent demand letters for the private respondent to vacate the place in question.

Petitioner claims further that before the purchase of said land from the Bureau of Lands, private respondent's possession

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of the same was that of a squatter and with the tolerance only of the government. After the purchase, the continuance of the possession of the same by private respondent was also by tolerance impliedly given by the petitioner to private respondent, so that upon demand to vacate the same, the failure and refusal of private respondent constitute an unlawful detainer of the land in question.

Such contention is completely impressed with merit.

PREMISES CONSIDERED, the instant petition is hereby GRANTED, the private respondent is ordered to vacate the premises, and the assailed decision and resolution of the Court of Appeals are REVERSED and SET ASIDE. This decision is immediately executory.

SO ORDERED.

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

EN BANC

[G.R. No. 80879. March 21, 1988]

***HONORIO SAAVEDRA, JR., ESTER SAAVEDRA, CESAR SAAVEDRA,* and ROEL BEJASA,** *petitioners, vs.* **SECURITIES AND EXCHANGE COMMISSION, GREGORIO RAMOS, NAPOLEN RAMOS, CELSO TINGCUNGCO, ARMANDO DOMINGO and CAROLINA SEBASTIAN,** *respondents.*