Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

EVERSLEY CHILDS SANITARIUM, represented by DR. GERARDO M. AQUINO, JR. (*now* DR. PRIMO JOEL S. ALVEZ) CHIEF OF SANITARIUM, Petitioner,	**G.R. No. 195814** Present: VELASCO, JR., *J., Chairperson,* BERSAMIN, LEONEN, MARTIRES, and GESMUNDO, *JJ.*
-versus-	
SPOUSES ANASTACIO and PERLA BARBARONA, Respondents.	**Promulgated:** April 4, 2018

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DECISION

LEONEN, *J.*:

A case for unlawful detainer must state the period from when the occupation by tolerance started and the acts of tolerance exercised by the party with the right to possession. If it is argued that the possession was illegal from the start, the proper remedy is to file an *accion publiciana*, or a plenary action to recover the right of possession. Moreover, while an ejectment case merely settles the issue of the right of actual possession, the issue of ownership may be provisionally passed upon if the issue of possession cannot be resolved without it. Any final disposition on the issue of ownership, however, must be resolved in the proper forum.

This is a Petition for Review on Certiorari[1] assailing the Court of Appeals February 17, 2011 Decision,[2] which upheld the judgments of the Municipal Trial Court and Regional Trial Court ordering Eversley Childs Sanitarium (Eversley) to vacate the disputed property. Eversley assails the August 31, 2011 Resolution[3] of the Court of Appeals for resolving its Motion for Reconsideration despite its earlier submission of a Motion to Withdraw the Motion for Reconsideration.

Eversley is a public health facility operated by the Department of Health to administer care and treatment to patients suffering from Hansen's disease, commonly known as leprosy, and to provide basic health services to non-Hansen's cases.[4] Since 1930, it has occupied a portion of a parcel of land denominated as Lot No. 1936 in Jagobiao, Mandaue City, Cebu.[5]

Spouses Anastacio and Perla Barbarona (the Spouses Barbarona) allege that they are the owners of Lot No. 1936 by virtue of Transfer Certificate of Title (TCT) No. 53698. They claim that they have acquired the property from the Spouses Tarcelo B. Gonzales and Cirila Alba (the Spouses Gonzales),[6] whose ownership was covered by Original Certificate of Title (OCT) No. RO-824. Per the Spouses Barbarona's verification, OCT No. RO-824 was reconstituted based on Decree No. 699021, issued to the Spouses Gonzales by the Land Registration Office on March 29, 1939.[7]

On May 6, 2005, the Spouses Barbarona filed a Complaint for Ejectment (Complaint)[8] before the Municipal Trial Court in Cities of Mandaue City against the occupants of Lot No. 1936, namely, Eversley, Jagobiao National High School, the Bureau of Food and Drugs, and some residents (collectively, the occupants). The Spouses Barbarona alleged that they had sent demand letters and that the occupants were given until April 15, 2005 to vacate the premises. They further claimed that despite the lapse of the period, the occupants refused to vacate; hence, they were constrained to file the Complaint.[9]

In their Answer,[10] the occupants alleged that since they had been in possession of the property for more than 70 years, the case was effectively

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1 *Rollo*, pp. 23–55.

2 Id. at 57–66. The Decision, docketed as CA-G.R. SP No. 02762, was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Pampio A. Abarintos and Edwin D. Sorongon of the Special Eighteenth Division, Court of Appeals, Cebu City.

3 A copy of this Resolution was not submitted before this Court.

4 Department of Health, Eversley Childs Sanitarium, *About Us*, <http://ecs.doh.gov.ph/13-about-us?start=4> (last accessed March 23, 2018).

5 *Rollo*, p. 26.

6 Id. at 59. The CA Decision spelled the Spouses Gonzales' names as "Tarcilo" and "Cirilia." *See rollo*, p. 58.

7 Id. at 58–59.

8 Id. at 72–77.

9 Id. at 58 and pp. 101–102, MTCC Decision.

10 Id. at 78–83.

one for recovery of possession, which was beyond the jurisdiction of the Municipal Trial Court. They likewise claimed that the Spouses Barbarona were guilty of laches since it took more than 60 years for them to seek the issuance of a Torrens title over the property. They also averred that the Spouses Barbarona's certificate of title was void since they, the actual inhabitants of the property, were never notified of its issuance.[11]

In its September 29, 2005 Decision,[12] the Municipal Trial Court in Cities ordered the occupants to vacate the property, finding that the action was one for unlawful detainer, and thus, within its jurisdiction. It likewise found that the Spouses Barbarona were the lawful owners of Lot No. 1936 and that the occupants were occupying the property by mere tolerance.[13]

The Municipal Trial Court in Cities also held that a titled property could not be acquired through laches. It found that even the occupants' tax declarations in their names could not prevail over a valid certificate of title.[14] The dispositive portion of its Decision read:

> WHEREFORE, judgment is hereby rendered in favor of the [the Spouses Barbarona] and against all the [occupants] and ordering the latter to peacefully vacate the portion of the premises in question and remove their houses, structures or any building and improvements introduced or constructed on said portion on Lot 1936 covered by TCT No. 53698.
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> The [occupants] are further ordered to pay the following, to wit:
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> 1. The amount of P10.00 per square meter for the area occupied by each [of the occupants] as reasonable monthly compensation for the use of the portion of the property of [the Spouses Barbarona] from the date of the filing of the complaint until [the occupants] shall have actually vacated and turned over the portion of their possession to the [Spouses Barbarona];
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> 2. The amount of P20,000 as litigation expenses and P20,000 as reasonable attorney[']s fees; and
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> 3. The cost of suit.
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> Counterclaims of the [occupants] are hereby ordered DISMISSED for lack of merit.
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> SO ORDERED.[15]

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11 Id. at 58–59.

12 Id. at 100–109. The Decision, docketed as Civil Case No. 5079, was penned by Judge Wilfredo A. Dagatan of Branch 3, Municipat Trial Court in Cities, Mandaue City.

13 Id. at 106–108.

14 Id. at 108.

15 Id. at 109.

The occupants appealed to the Regional Trial Court. In its November 24, 2006 Decision,[16] the Regional Trial Court affirmed in toto the Decision of the Municipal Trial Court in Cities. One of the occupants, Eversley, filed a motion for reconsideration.[17]

During the pendency of Eversley's motion, or on February 19, 2007, the Court of Appeals in CA-G.R. CEB-SP No. 01503 rendered a Decision, cancelling OCT No. RO-824 and its derivative titles, including TCT No. 53698, for lack of notice to the owners of the adjoining properties and its occupants.[18]

On April 23, 2007, the Regional Trial Court issued an Order denying Eversley's Motion for Reconsideration.[19]

Eversley filed a Petition for Review[20] with the Court of Appeals, arguing that the Municipal Trial Court had no jurisdiction over the action and that the Regional Trial Court erred in not recognizing that the subsequent invalidation of the Spouses Barbarona's certificate of title was prejudicial to their cause of action.[21]

On February 17, 2011, the Court of Appeals rendered its Decision,[22] denying the Petition. According to the Court of Appeals, the allegations in the Complaint were for the recovery of the physical possession of the property and not a determination of the property's ownership. The action, thus, was one for unlawful detainer and was properly filed with the Municipal Trial Court.[23]

The Court of Appeals held that the subsequent invalidation of the issuance of the certificate of title was immaterial, stating:

> Whether or not [the Spouses Barbarona are] holder[s] or not of a certificate of title is immaterial. The matter of the issuance of the decree by the Land Registration Office in favor of [the Spouses Barbarona's] predecessor[s-]in[-]interest has not been resolved on the merits by the RTC. [The Spouses Barbarona,] having acquired all the rights of their predecessors-in-interest[,] have[,] from the time of the issuance of the decree[,] also derived title over the property and nullification of the title based on procedural defects is not tantamount to the nullification of the

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16 Id. at 110–118. The Decision, docketed as Civil Case No. Man-5305-A, was penned by Judge Ulric R. Cañete of Branch 55, Regional Trial Court, Mandaue City.

17 Id. at 31.

18 Id. at 31–32 and 63.

19 Id. at 32 and 135.

20 Id. at 137–149

21 Id. at 60–61.

22 Id. at 57–66.

23 Id. at 61–62.

> decree. The decree stands and remains a prima facie source of the [Spouses Barbarona's] right of ownership over the subject property.[24]

Eversley, represented by the Office of the Solicitor General, filed a Petition for Review[25] with this Court assailing the February 17, 2011 Decision of the Court of Appeals. It likewise prayed for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[26] to restrain the immediate execution of the assailed judgment and to prevent impairing the operations of the government hospital, which had been serving the public for more than 80 years.

In its May 13, 2011 Resolution,[27] this Court issued a Temporary Restraining Order enjoining the implementation of the Court of Appeals February 17, 2011 Decision. Respondents were also directed to comment on the Petition.

In its Petition before this Court, petitioner argues that the nullification of TCT No. 53698 should have been prejudicial to respondents' right to recover possession over the property. Petitioner claims that since the Metropolitan Trial Court relied on respondents' title to determine their right of possession over the property, the subsequent nullification of their title should have invalidated their right of possession. Petitioner maintains that even if Decree No. 699021 was valid, the effect of its validity does not extend to respondents since there is no evidence to prove that they have acquired the property from Tarcelo B. Gonzales, the owner named in the decree.[28]

Petitioner points out that respondents' Complaint before the trial court was a case for *accion publiciana*, not one for unlawful detainer, since respondents have not proven petitioner's initial possession to be one of mere tolerance. It claims that respondents' bare allegation that they merely tolerated petitioner's possession is insufficient in a case for unlawful detainer, especially with petitioner's possession of the property since 1930, which pre-dates the decree that was reconstituted in 1939.[29] It argues that its long occupancy should have been the subject of judicial notice since it is a government hospital serving the city for decades and is even considered as a landmark of the city.[30]

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24 Id. at 64.
25 Id. at 23–55.
26 Id. at 50–51.
27 Id. at 180–182. The Office of the Solicitor General informed this Court in a Manifestation dated May 7, 2012 that the Regional Trial Court issued an Order dated March 15, 2012 granting respondents' Motion for Execution pending appeal, *rollo*, pp. 314–318. The trial court, however, recalled its March 15, 2012 Order on May 3, 2012, *rollo*, p. 323.
28 Id. at 36–37.
29 Id. at 39–46.
30 Id. at 48–49.

On the other hand, respondents counter that the cancellation of TCT No. 53698 "does not . . . divest respondents of their rightful ownership of the subject property[,] more so their right of possession"[31] since their predecessors-in-interest's title was still valid and protected under the Torrens system. They insist that "petitioner has not shown . . . any sufficient evidence proving [its] ownership . . . much less, [its] right of possession."[32]

Respondents maintain that the Municipal Trial Court had jurisdiction over their complaint since prior physical possession is not an indispensable requirement and all that is required is "that the one-year period of limitation commences from the time of demand to vacate."[33]

While the Petition was pending before this Court, respondents raised a few procedural concerns before submitting their Comment. In their Motion for Leave to File Comment/Manifestation,[34] respondents informed this Court that petitioner still had a pending and unresolved Motion for Reconsideration[35] before the Court of Appeals, in violation of the rule against forum shopping. Respondents, nonetheless, filed their Comment/Manifestation,[36] to which this Court ordered petitioner to reply.[37]

Petitioner filed its Reply[38] and submitted a Manifestation,[39] explaining that the Court of Appeals had issued a Resolution[40] on August 31, 2011, denying its Motion for Reconsideration despite its earlier filing on April 14, 2011 of a Manifestation and Motion to Withdraw its Motion for Reconsideration. Thus, it manifested its intention to likewise question the Court of Appeals August 31, 2011 Resolution with this Court.

On November 28, 2011, this Court noted that petitioner's Reply and Manifestation and directed respondents to comment on the Manifestation.[41]

In their Comment on Petitioner's Manifestation,[42] respondents assert that while petitioner submitted a Manifestation and Motion to Withdraw its Motion for Reconsideration, the Court of Appeals did not issue any order considering petitioner's Motion for Reconsideration to have been abandoned. The Court of Appeals instead proceeded to resolve it in its August 31, 2011 Resolution; hence, respondents submit that petitioner

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31 Id. at 210.
32 Id. at 211.
33 Id. at 213.
34 Id. at 183–185.
35 Id. at 190–202.
36 Id. at 186–189 and 208–216.
37 Id. at 207.
38 Id. at 275–295.
39 Id. at 296–300.
40 A copy of this Resolution was not submitted before this Court.
41 *Rollo*, p. 307.
42 Id. at 308–312.

violated the rule on non-forum shopping.[43]

Based on the arguments of the parties, this Court is asked to resolve the following issues:

First, whether or not the nullification of the Spouses Anastacio and Perla Barbarona's title had the effect of invalidating their right of possession over the disputed property; and

Second, whether or not the Spouses Anastacio and Perla Barbarona's complaint against Eversley Childs Sanitarium was for *accion publiciana* or for unlawful detainer.

Before these issues may be passed upon, however, this Court must first resolve the procedural question of whether or not Eversley Childs Sanitarium violated the rule on non-forum shopping.

I

In *City of Taguig v. City of Makati*,[44] this Court discussed the definition, origins, and purpose of the rule on forum shopping:

> *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* explained that:
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> > Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.
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> *First Philippine International Bank v. Court of Appeals* recounted that forum shopping originated as a concept in private international law:
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> > To begin with, forum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than

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43 Id. at 309–310.

44 G.R. No. 208393, June 15, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208393.pdf> [Per J. Leonen, Second Division].

> honorable excuses, the principle of forum non conveniens was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.
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> In this light, Black's Law Dictionary says that forum-shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to Words and Phrases, "a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."

Further, *Prubankers Association v. Prudential Bank and Trust Co.* recounted that:

> The rule on forum-shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned." Thereafter, the Court restated the rule in Revised Circular No. 28-91 and Administrative Circular No. 04-94. Ultimately, the rule was embodied in the 1997 amendments to the Rules of Court.[45]

There is forum shopping when a party files different pleadings in different tribunals, despite having the same "identit[ies] of parties, rights or causes of action, and reliefs sought."[46] Consistent with the principle of fair play, parties are prohibited from seeking the same relief in multiple forums in the hope of obtaining a favorable judgment. The rule against forum shopping likewise fulfills an administrative purpose as it prevents conflicting decisions by different tribunals on the same issue.

In filing complaints and other initiatory pleadings, the plaintiff or petitioner is required to attach a certification against forum shopping, certifying that (a) no other action or claim involving the same issues has been filed or is pending in any court, tribunal, or quasi-judicial agency, (b) if there is a pending action or claim, the party shall make a complete statement

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[45] Id. at 10–11, *citing Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* , 457 Phil. 740 (2003) [Per J. Bellosillo, Second Division]; *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280 (1996) [Per J. Panganiban, Third Division]; and *Prubankers Association v. Prudential Bank and Trust Co.*, 361 Phil. 744 (1999) [Per J. Panganiban, Third Division].

[46] *Yap v. Chua*, 687 Phil. 392, 400 (2012) [Per J. Reyes, Second Division] *citing Young v. John Keng Seng*, 446 Phil. 823, 833 (2003) [Per J. Panganiban, Third Division].

of its present status, and (c) if the party should learn that the same or similar action has been filed or is pending, that he or she will report it within five (5) days to the tribunal where the complaint or initiatory pleading is pending. Thus, Rule 7, Section 5 of the Rules of Court provides:

> Section 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
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> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Petitioner, through the Office of the Solicitor General, is alleged to have committed forum shopping when it filed its Petition for Review on Certiorari with this Court, despite a pending Motion for Reconsideration with the Court of Appeals.

According to the Solicitor General, it filed a Motion for Extension of Time to File a Petition for Review on Certiorari with this Court on March 10, 2011 but that another set of solicitors erroneously filed a Motion for Reconsideration with the Court of Appeals on March 11, 2011.[47] Thus, it was constrained to file a Manifestation and Motion to Withdraw its Motion for Reconsideration on April 14, 2011,[48] the same date as its Petition for Review on Certiorari with this Court. Indeed, its Certification of Non-Forum Shopping, as certified by State Solicitor Joan V. Ramos-Fabella, provides:

. . . .

> 5. *I certify that there is a pending Motion for Reconsideration erroneously filed in the Court of Appeals, Special Eighteenth Division which we have*

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47 *Rollo*, p. 297.

48 Id. at 296

> *asked to be withdrawn.* Aside from said pending motion, I have not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and should I thereafter learn that the same or similar action or claim is pending before any other court, tribunal or quasi-judicial agency, I shall report such fact within five (5) days therefrom from the court wherein this petition has been filed.[49] (Emphasis supplied)

The Office of the Solicitor General, however, mistakenly presumed that the mere filing of a motion to withdraw has the effect of withdrawing the motion for reconsideration without having to await the action of the Court of Appeals. The Office of the Solicitor General's basis is its reading of Rule VI, Section 15 of the 2002 Internal Rules of the Court of Appeals:

> Section 15. Effect of Filing an Appeal in the Supreme Court. – No motion for reconsideration or rehearing shall be acted upon if the movant has previously filed in the Supreme Court a petition for review on certiorari or a motion for extension of time to file such petition. If such petition or motion is subsequently filed, the motion for reconsideration pending in this Court shall be deemed abandoned.

This would have been true had the Office of the Solicitor General merely manifested that it had already considered its Motion for Reconsideration before the Court of Appeals as abandoned, pursuant to its Internal Rules. However, it filed a Motion to Withdraw, effectively submitting the withdrawal of its Motion for Reconsideration to the Court of Appeals' sound discretion. A motion is not presumed to have already been acted upon by its mere filing. Prudence dictated that the Office of the Solicitor General await the Court of Appeals' action on its Motion to Withdraw before considering its Motion for Reconsideration as withdrawn.

Ordinarily, "a motion that is not acted upon in due time is deemed denied."[50] When the Court of Appeals denied the Office of the Solicitor General's Motion for Reconsideration without acting on its Motion to Withdraw, the latter was effectively denied. Petitioner, thus, committed forum shopping when it filed its Petition before this Court despite a pending Motion for Reconsideration before the Court of Appeals.

To rule in this manner, however, is to unnecessarily deprive petitioner of its day in court despite the Court of Appeals' failure to apply its own Internal Rules. The Internal Rules of the Court of Appeals clearly provide that a subsequent motion for reconsideration shall be deemed abandoned if the movant filed a petition for review or motion for extension of time to file a petition for review before this Court. While the Office of the Solicitor

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[49] Id. at 54.

[50] *Orosa v. Court of Appeals*, 330 Phil. 67, 72 (1996) [Per J. Bellosillo, First Division].

General can be faulted for filing a motion instead of a mere manifestation, it cannot be faulted for presuming that the Court of Appeals would follow its Internal Rules as a matter of course.

Rule VI, Section 15 of the Internal Rules of the Court of Appeals is provided for precisely to prevent forum shopping. It mandates that once a party seeks relief with this Court, any action for relief with the Court of Appeals will be deemed abandoned to prevent conflicting decisions on the same issues. Had the Court of Appeals applied its own Internal Rules, petitioner's Motion for Reconsideration would have been deemed abandoned.

Moreover, unlike this Court, which can suspend the effectivity of its own rules when the ends of justice require it,[51] the Court of Appeals cannot exercise a similar power. Only this Court may suspend the effectivity of any provision in its Internal Rules.[52] Thus, it would be reasonable for litigants to expect that the Court of Appeals would comply with its own Internal Rules.

Petitioner's Motion for Reconsideration having been deemed abandoned with its filing of a Motion for Extension of Time before this Court, the Court of Appeals' August 31, 2011 Resolution denying the Motion for Reconsideration, thus, has no legal effect. It is as if no motion for reconsideration was filed at all.[53] Considering that petitioner counted the running of the period to file its Petition with this Court from its receipt of the Court of Appeals February 17, 2011 Decision, and not of the Court of Appeals August 31, 2011 Resolution, it does not appear that petitioner "wanton[ly] disregard[ed] the rules or cause[d] needless delay in the administration of justice."[54] In this particular instance, petitioner did not commit a fatal procedural error.

II

By its very nature, an ejectment case only resolves the issue of who has the better right of possession over the property. The right of possession in this instance refers to *actual* possession, not legal possession. While a party may later be proven to have the legal right of possession by virtue of ownership, he or she must still institute an ejectment case to be able to

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51 *See* CONST, art. VIII, sec. 5(5) on the power of this Court to promulgate rules on pleading and practice and *Vda. De Ordoveza v. Raymundo*, 63 Phil. 275 (1936) [Per J. Abad Santos, En Banc].

52 *See* 2002 Internal Rules of the Court of Appeals, Rule VIII, sec. 11.
Section 11. Separability Clause. – If the effectivity of any provision of these Rules is suspended or disapproved by the Supreme Court, the unaffected provisions shall remain in force.

53 *See Rodriguez v. Aguilar*, 505 Phil. 468 (2005) [Per J. Panganiban, Third Division].

54 *Philippine Public School Teachers Association v. Heirs of Iligan*, 528 Phil. 1197, 1212 (2006) [Per J. Callejo, Sr., First Division].

dispossess an actual occupant of the property who refuses to vacate. In *Mediran v. Villanueva*:[55]

> Juridically speaking, possession is distinct from ownership, and from this distinction are derived legal consequences of much importance. In giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who in fact has actual possession; and in case of controverted right, it requires the parties to preserve the *status quo* until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction; and he [cannot] be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right.[56]

In ejectment cases, courts will only resolve the issue of ownership provisionally if the issue of possession cannot be resolved without passing upon it. In *Co v. Militar*:[57]

> We have, time and again, held that the only issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. Moreover, an ejectment suit is summary in nature and is not susceptible to circumvention by the simple expedient of asserting ownership over the property.
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> In forcible entry and unlawful detainer cases, even if the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the lower courts and the Court of Appeals, nonetheless, have the undoubted competence to provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession.
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> Such decision, however, does not bind the title or affect the ownership of the land nor is conclusive of the facts therein found in a case between the same parties upon a different cause of action involving possession.[58]

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55 37 Phil. 752 (1918) [Per J. Street, En Banc].

56 Id. at 757.

57 466 Phil. 217 (2004) [Per J. Ynares-Santiago, First Division].

58 Id. at 223–224, *citing Spouses Antonio and Genoveva Balanon-Anicete and Spouses Andres and Filomena Balanon-Mananquil v. Pedro Balanon*, 450 Phil. 615 (2003) [Per J. Ynares-Santiago, First Division]; *Embrado v. Court of Appeals*, 303 Phil. 344 (1994) [Per J. Bellosillo, First Division]; and *Republic v. Court of Appeals*, 305 Phil. 611 (1994) [Per J. Bidin, En Banc].

In this instance, respondents anchor their right of possession over the disputed property on TCT No. 53698[59] issued in their names. It is true that a registered owner has a right of possession over the property as this is one of the attributes of ownership.[60] Ejectment cases, however, are not automatically decided in favor of the party who presents proof of ownership, thus:

> Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.
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> In the present case, petitioner opted to file an ejectment case against respondents. Ejectment cases — forcible entry and unlawful detainer — are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved. The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable. For this reason, *an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property.* Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven.[61] (Emphasis supplied)

Here, respondents alleged that their right of ownership was derived from their predecessors-in-interest, the Spouses Gonzales, whose Decree No. 699021 was issued on March 29, 1939.[62] The Register of Deeds certified that there was no original certificate of title or owner's duplicate issued over the property, or if there was, it may have been lost or destroyed during the Second World War. The heirs of the Spouses Gonzales subsequently executed a Deed of Full Renunciation of Rights, Conveyance of Full Ownership and Full Waiver of Title and Interest on March 24, 2004 in respondents' favor. Thus, respondent Anastacio Barbarona succeeded in having Decree No. 699021 reconstituted on July 27, 2004 and having TCT No. 53698 issued in respondents' names on February 7, 2005.[63]

The Municipal and Regional Trial Courts referred to respondents' Torrens title as basis to rule the ejectment case in their favor:

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59 *Rollo*, pp. 262–263.

60 *See Co v. Militar*, 466 Phil. 217 (2004) [Per J. Ynares-Santiago, First Division].

61 *Carbonilla v. Abiera*, 639 Phil. 473, 481 (2010) [Per J. Nachura, Second Division] *citing Go, Jr. v. Court of Appeals*, 415 Phil. 172, 183 (2001) [Per J. Gonzaga-Reyes, Third Division] and *David v. Cordova*, 502 Phil. 626 (2005) [Per J. Tinga, Second Division].

62 *Rollo*, p. 258.

63 Id. at 259–262.

> The complaint in this case sufficiently . . . establish[es] beyond doubt that [the Spouses Barbarona] are the lawful owners of Lot 1936, situated at Jagobiao, Mandaue City, as evidenced by Transfer Certificate of Title No. 53698. . . .
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> . . . .
> A certificate of title is a conclusive evidence of ownership and as owners, the [the Spouses Barbarona] are entitled to possession of the property. . . .
>
> This Court however cannot just simply closed (sic) its eyes into the fact presented before the trial court that the subject lot owned by [the Spouses Barbarona] is covered by a Torrens Certificate of Title. Until such time or period that such title is rendered worthless, the same is BINDING UPON THE WHOLE WORLD in terms of ownership[.][64] (Emphasis in the original)

During the interim, the Republic of the Philippines, represented by the Office of the Solicitor General, filed a Petition for Annulment of Judgment before the Court of Appeals to assail the reconstitution of Decree No. 699021, docketed as CA-G.R. SP No. 01503. On February 19, 2007,[65] the Court of Appeals in that case found that the trial court reconstituted the title without having issued the required notice and initial hearing to the actual occupants, rendering all proceedings void. The dispositive portion of the Decision read:

> WHEREFORE, in the light of the foregoing, judgment is hereby rendered GRANTING the instant petition and SETTING ASIDE the Order of Branch 55 of the Regional Trial Court, Mandaue City in Case No. 3 G.L.R.O., Record No. 4030.
>
> SO ORDERED.[66]

As a consequence of this ruling, TCT No. 53698 was cancelled by the Register of Deeds on January 25, 2011.[67]

Despite these developments, the Court of Appeals in this case proceeded to affirm the Municipal Trial Court's and Regional Trial Court's judgments on the basis that Decree No. 699021 was still valid, stating:

> Whether or not [the Spouses Barbarona are] holder[s] or not of a certificate of title is immaterial. The matter of the issuance of the decree by the Land Registration Office in favor of [the Spouses Barbarona's] predecessor[s-]in[-]interest has not been resolved on the merits by the RTC. [The Spouses Barbarona,] having acquired all the rights of their predecessors-in-interest[,] have[,] from the time of the issuance of the decree[,] also derived title over the property and nullification of the title

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64 Id. at 107 and 117.
65 Id. at 125.
66 Id. at 131.
67 Id. at 263.

> based on procedural defects is not tantamount to the nullification of the decree. The decree stands and remains a prima facie source of the [Spouses Barbarona's] right of ownership over the subject property.[68]

Blinded by respondents' allegedly valid title on the property, the three (3) tribunals completely ignored how petitioner came to occupy the property in the first place.

Petitioner, a public hospital operating as a leprosarium dedicated to treating persons suffering from Hansen's disease, has been occupying the property since May 30, 1930. According to its history:

> The institution was built by the Leonard Wood Memorial with most of the funds donated by the late Mr. Eversley Childs of New York, USA, hence the name, Eversley Childs Sanitarium, in honor of the late donor. The total cost was about 400,000.00 which were spent for the construction of 52 concrete buildings (11 cottages for females and 22 for males, 5 bathhouses, 2 infirmaries, powerhouse, carpentry shop, general kitchen and storage, consultation and treatment clinics and offices), waterworks, sewerage, road and telephone system, equipment and the likes.
>
> The construction of the building [was] started sometime on May 1928 and was completed 2 years later. It was formally turned over the Philippine government and was opened [on] May 30, 1930 with 540 patients transferred in from Caretta Treatment Station, now Cebu Skin Clinic in Cebu City.[69]

Proclamation No. 507 was issued on October 21, 1932, "which reserved certain parcels of land in Jagobiao, Mandaue City, Cebu as additional leprosarium site for the Eversley Childs Treatment Station."[70] Petitioner's possession of the property, therefore, pre-dates that of respondents' predecessors-in-interest, whose Decree No. 699021 was issued in 1939.

It is true that defects in TCT No. 53698 or even Decree No. 699021 will not affect the fact of ownership, considering that a certificate of title does not vest ownership. The Torrens system "simply recognizes and documents ownership and provides for the consequences of issuing paper titles."[71]

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68 Id. at 64.

69 Department of Health, Eversley Childs Sanitarium, *About Us*, <http://ecs.doh.gov.ph/13-about-us?start=4> (Accessed March 23, 2018).

70 Proc. No. 1772 (2009), also known as Amending Proclamation No. 507 dated October 21, 1932 which Reserved Certain Parcels of Land in Jagobiao, Mandaue City, Cebu as Additional Leprosarium Site for the Eversley Childs Treatment Station, by Excluding Portions thereof and Development and Socialized Housing Site Purposes in Favor of Qualified Beneficiaries under the Provisions of Republic Act No. 7279 Otherwise Known as the Urban Development Housing Act.

71 Concurring and Dissenting Opinion of J. Leonen in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 207 (2013) [Per J. Bersamin, En Banc].

Without TCT No. 53698, however, respondents have no other proof on which to anchor their claim. The Deed of Full Renunciation of Rights, Conveyance of Full Ownership and Full Waiver of Title and Interest executed in their favor by the heirs of the Spouses Gonzales is insufficient to prove conveyance of property since no evidence was introduced to prove that ownership over the property was validly transferred to the Spouses Gonzales' heirs upon their death.

Moreover, Proclamation No. 507, series of 1932, *reserved* portions of the property specifically for petitioner's use as a leprosarium. Even assuming that Decree No. 699021 is eventually held as a valid Torrens title, a title under the Torrens system is always issued subject to the annotated liens or encumbrances, or what the law warrants or reserves. Thus:

> Under the Torrens system of registration, the government is required to issue an official certificate of title to attest to the fact that the person named is the owner of the property described therein, subject to such liens and encumbrances as thereon noted *or what the law warrants or reserves*.[72] (Emphasis supplied)

Portions occupied by petitioner, having been reserved by law, cannot be affected by the issuance of a Torrens title. Petitioner cannot be considered as one occupying under mere tolerance of the registered owner since its occupation was by virtue of law. Petitioner's right of possession, therefore, shall remain unencumbered subject to the final disposition on the issue of the property's ownership.

III

There are three (3) remedies available to one who has been dispossessed of property: (1) an action for ejectment to recover possession, whether for unlawful detainer or forcible entry; (2) *accion publiciana* or *accion plenaria de posesion*, or a plenary action to recover the right of possession; and (3) *accion reivindicatoria*, or an action to recover ownership.[73]

Although both ejectment and *accion publiciana* are actions specifically to recover the right of possession, they have two (2) distinguishing differences. The first is the filing period. Ejectment cases must be filed within one (1) year from the date of dispossession. If the dispossession lasts for more than a year, then an *accion publiciana* must be

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[72] *Republic v. Guerrero*, 520 Phil. 296, 307 (2006) [Per J. Garcia, Second Division] *citing* Noblejas. LAND TITLES AND DEEDS, 32 (1986).

[73] *See Bejar v. Caluag*, 544 Phil. 774, 779 (2007) [Per J. Sandoval-Gutierrez, First Division].

filed. The second distinction concerns jurisdiction. Ejectment cases, being summary in nature, are filed with the Municipal Trial Courts. *Accion publiciana*, however, can only be taken cognizance by the Regional Trial Court.[74]

Petitioner argues that the Municipal Trial Court has no jurisdiction over the case since respondents' cause of action makes a case for *accion publiciana* and not ejectment through unlawful detainer. It asserts that respondents failed to prove that petitioner occupied the property by mere tolerance.

Jurisdiction over subject matter is conferred by the allegations stated in the complaint.[75] Respondents' Complaint before the Municipal Trial Court states:

> That [the occupants] are presently occupying the above-mentioned property of the [Spouses Barbarona] without color [of] right or title. Such occupancy is purely by mere tolerance. Indeed, [the occupants'] occupying the lot owned by [the Spouses Barbarona] is illegal and not anchored upon any contractual relations with the [Spouses Barbarona.][76]

Indeed, no mention has been made as to how petitioner came to possess the property and as to what acts constituted tolerance on the part of respondents or their predecessors-in-interest to allow petitioner's occupation. In *Carbonilla v. Abiera*:[77]

> A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful, and such possession must have turned unlawful only upon the expiration of the right to possess. It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of tolerance must be proved.
>
> Petitioner failed to prove that respondents' possession was based on his alleged tolerance. He did not offer any evidence or even only an affidavit of the Garcianos attesting that they tolerated respondents' entry to and occupation of the subject properties. A bare allegation of tolerance will not suffice. Plaintiff must, at least, show overt acts indicative of his or his predecessor's permission to occupy the subject property. . . .
>
> . . . .
>
> In addition, plaintiff must also show that the supposed acts of tolerance have been present right from the very start of the possession — from entry to the property. Otherwise, if the possession was unlawful

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74 *See Bejar v. Caluag*, 544 Phil. 774, 779–780 (2007) [Per J. Sandoval-Gutierrez, First Division].

75 *See Encarnacion v. Amigo*, 533 Phil. 466 (2006) [Per J. Ynares-Santiago, First Division].

76 *Rollo*, pp. 73–74.

77 639 Phil. 473 (2010) [Per J. Nachura, Second Division].

> from the start, an action for unlawful detainer would be an improper remedy. Notably, no mention was made in the complaint of how entry by respondents was effected or how and when dispossession started. Neither was there any evidence showing such details.
>
> In any event, petitioner has some other recourse. He may pursue recovering possession of his property by filing an *accion publiciana*, which is a plenary action intended to recover the better right to possess; or an *accion reivindicatoria*, a suit to recover ownership of real property. We stress, however, that the pronouncement in this case as to the ownership of the land should be regarded as merely provisional and, therefore, would not bar or prejudice an action between the same parties involving title to the land.[78]

The same situation is present in this case. Respondents failed to state when petitioner's possession was initially lawful, and how and when their dispossession started. All that appears from the Complaint is that petitioner's occupation "is illegal and not anchored upon any contractual relations with [respondents.]"[79]

This, however, is insufficient to determine if the action was filed within a year from dispossession, as required in an ejectment case. On the contrary, respondents allege that petitioner's occupation was illegal from the start. The proper remedy, therefore, should have been to file an *accion publiciana* or *accion reivindicatoria* to assert their right of possession or their right of ownership.

Considering that respondents filed the improper case before the Municipal Trial Court, it had no jurisdiction over the case. Any disposition made, therefore, was void. The subsequent judgments of the Regional Trial Court and the Court of Appeals, which proceeded from the void Municipal Trial Court judgment, are likewise void.

WHEREFORE, the Petition is **GRANTED**. The February 17, 2011 Decision and August 31, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 02762 are **REVERSED** and **SET ASIDE**. The Temporary Restraining Order dated May 13, 2011 is made **PERMANENT**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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78 Id. at 482–483, citing *Spouses Macasaet v. Spouses Macasaet*, 482 Phil. 853 (2004) [J. Panganiban, Third Division]; *Valdez, Jr. v. Court of Appeals*, 523 Phil. 39 (2006) [Per J. Chico-Nazario, First Division]; and *Asis v. Asis Vda. de Guevarra*, 570 Phil. 173 (2008) [Per C.J. Puno, First Division].

79 *Rollo*, p. 74.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAY 25 2018