



Republic of the Philippines  
**Supreme Court**  
Manila

**SECOND DIVISION**

**SPOUSES MARINO DAGODE      G.R. No. 256851**  
**AND JULITA DUERO DAGODE,**  
Petitioners,

-versus-

**Present:**

**ELESITO D. TAPAO**, substituted by  
his children namely: **EDSEL L.**  
**TAPAO, EMELYN\* T. SIMPEON,**  
**ELIXER L. TAPAO AND**  
**ENGELBERT L. TAPAO, PURITA**  
**T. ANIN, MARINA T.**  
**CANTILLAS, MARITES TAPAO**  
**AND JESUS D. TAPAO,**

Respondents.

**LEONEN, Chairperson**  
**LAZARQ-JAVIER,**  
**LOPEZ, M.,**  
**LOPEZ, J., and**  
**KHO, JR., JJ.**

**Promulgated:**

**AUG 02 2023**

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**RESOLUTION**

**M. LOPEZ, J.:**

\* Referred to as Emelyn/Emenlyn in some parts of the rollo.

This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court, assails the March 28, 2018 Decision<sup>2</sup> and January 26, 2021 Resolution<sup>3</sup> of the Court of Appeals (CA)-Cebu City in CA-G.R. CEB-SP No. 07729, declaring the respondents to have a better right of possession of the land subject of the complaint for unlawful detainer.

Respondents Elesito D. Tapao (Elisito) substituted by his children namely: Edsel L. Tapao, Emelyn T. Simpron, Elixer L. Tapao, and Engelbert L. Tapao (collectively, Tapao siblings) alleged that they are the lawful owners of Cadastral Lot No. 6277 under Tax Declaration No. 033370, which they inherited from their parents. Sometime in 1952, the ancestors of petitioners, Spouses Marino and Julita Dagode, migrated from Camotes Island to Inoburan, Cebu. Being the relatives of respondents' mother, they were temporarily allowed to reside in the property free of rent and out of pure generosity. Over the years, petitioners' ancestors bred descendants who then resided in the disputed lot as extended families. In July 31, 2009, respondents informed petitioners that they will already use the property, but the latter refused to vacate the premises. Hence, respondents filed a case for unlawful detainer against petitioners before the Municipal Trial Court in Cities (MTCC), City of Naga, Cebu.<sup>4</sup>

On the other hand, petitioners countered that there is no proof that the lot they are occupying forms part of the land owned by respondents. Tax Declaration No. 033370<sup>5</sup> issued in the name of respondents could not be considered proof of possession and ownership since it does not contain a technical description of the land. Lastly, petitioners argued that the alleged tolerance by respondents' parents is only hearsay and is not supported by evidence.<sup>6</sup>

On August 25, 2010, the MTCC rendered its Decision<sup>7</sup> dismissing the complaint for unlawful detainer for lack of evidence. It noted that apart from the Affidavit of Elesito, the only evidence adduced by respondents to prove their ownership of the land is the single tax declaration issued in their names. The MTCC ruled that the tax declaration is not sufficient to establish respondents' right of possession over the real property unless supported by other proof. This is especially true in this case wherein respondents have not shown that they were in physical possession of the property.<sup>8</sup>

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<sup>1</sup> *Rollo*, pp. 11–26.

<sup>2</sup> *Id.* at 131–143. Penned by Associate Justice Louis P. Acosta, with the concurrence of Associate Justices Edgardo L. Delos Santos (retired member of this Court) and Edward B. Contreras of the Nineteenth Division, Court of Appeals, Cebu City.

<sup>3</sup> *Id.* at 152–154. Penned by Associate Justice Dorothy P. Montejo-Gonzaga, with the concurrence of Associate Justices Gabriel T. Ingles and Bautista G. Corpin, Jr. of the Special Former Nineteenth Division, Court of Appeals, Cebu City.


<sup>4</sup> *Id.* at 57–62.

<sup>5</sup> *Id.* at 63–64.

<sup>6</sup> *Id.* at 70–72.

<sup>7</sup> *Id.* at 88–89.

<sup>8</sup> *Id.* at 89.



On appeal, the MTCC's judgment was affirmed by the Regional Trial Court (RTC), Branch 19 of Cebu City. In its Decision<sup>9</sup> dated March 8, 2011, the RTC held that a mere tax declaration does not prove ownership since there is no actual physical possession on the part of respondents. Further, the RTC noted that respondents miserably failed to present evidence of the actual location of Lot No. 6277. The confusion as to the identity and exact location of the lot was compounded by the error committed by the Naga City Assessor's Office in previously designating the land as Lot No. 12865-P, supposedly covered by Tax Declaration No. 03369, when the lot is actually denominated as Lot No. 6277.<sup>10</sup> The RTC ruled:

**WHEREFORE**, the lower court's appealed **DECISION** dated August 25, 2010, is hereby **AFFIRMED** in *toto*.

**SO ORDERED.**<sup>11</sup> (Emphasis supplied)

Respondents sought reconsideration of the adverse judgment but their Motion<sup>12</sup> was denied in the RTC's Order<sup>13</sup> dated April 12, 2013.

Upon petition for review, the CA reversed the RTC's findings. In the assailed Decision dated March 28, 2018, the CA ruled that respondents are entitled to the possession of the property which is owned by their parents. It stressed that the only issue in an ejectment case is the possession of real property, which does not require a person to have his feet on every square meter of the ground. Moreover, the CA clarified that prior physical possession by the plaintiff is not an indispensable requirement in an unlawful detainer case. Precisely, the physical possession is being unlawfully withheld by the occupant despite the expiration of the right to possess. As regards Tax Declaration No. 033370 issued in respondents' name, the CA held that this document already constitutes *prima facie* evidence of respondents' claim of title over the property and consequently, the right to possession. The CA decreed:

**ACCORDINGLY**, the instant petition is **GRANTED**.

The Decision dated 08 March 2011 and the Order dated 12 April 2013 of the Regional Trial Court of Cebu City in Civil Case No. CEB-37351 are hereby **REVERSED and SET ASIDE**, and a new judgment is hereby rendered ordering the respondents and all other persons claiming rights under them to:

1. **VACATE AND SURRENDER** the actual physical possession of the subject property peacefully to the petitioners;

2. **PAY** the petitioners the reasonable monthly rentals of Php3,000.00 from 31 July 2009 until the respondents vacate the subject property, with an interest rate of 6% per annum from the finality of this Decision until fully paid; and to

<sup>9</sup> *Id.* at 110–115.

<sup>10</sup> *Id.* at 113.

<sup>11</sup> *Id.* at 115.

<sup>12</sup> *Id.* at 116–119.

<sup>13</sup> *Id.* at 122–123.

*J*

3. **PAY** the cost of suit.

SO ORDERED.<sup>14</sup>

The CA denied petitioners' Motion for Reconsideration<sup>15</sup> in its Resolution<sup>16</sup> dated January 26, 2021.

Here, petitioners allege that the CA erred in ruling that respondents have a better right of possession based on a tax declaration that was only issued in 2009. Respondents did not present the earlier tax declarations to prove that their predecessors-in-interest had adverse constructive possession over the property since the 1950s. On the issue of tolerance, respondents claimed that their parents allowed petitioners' ancestors to occupy Lot No. 6277. However, apart from this bare allegation, there is nothing on record that would establish the overt acts of tolerance. Finally, petitioners maintain that there is no showing that the land being claimed by respondents under Tax Declaration No. 033370 is the same lot being occupied by them. Considering that respondents failed to prove by preponderance of evidence the identity of the lot in question, their Complaint for unlawful detainer must be dismissed.<sup>17</sup>

Respondents did not file a comment to the Petition.

### **Ruling**

The Petition has no merit.

At the outset, we stress that the Court is not a trier of facts, and our jurisdiction in a Rule 45 petition is limited to reviewing questions of law.<sup>18</sup> The main issue raised by petitioners as to whether the CA correctly weighed the evidence regarding the possession of the disputed lot is a question of fact.<sup>19</sup> Although this matter is beyond the ambit of the Court's limited jurisdiction, this rule admits of exceptions,<sup>20</sup> such as when the CA's findings are contrary to those made by the MTCC and the RTC, as in this case. As such, the Court

<sup>14</sup> *Id.* at 142–143.

<sup>15</sup> *Id.* at 144–147.


<sup>16</sup> *Id.* at 152–154.

<sup>17</sup> *Id.* at 11–26.

<sup>18</sup> *Manila Electric Co. v. AAA Cryogenics Philippines, Inc.*, 890 Phil. 674, 685 (2020) [Per J. Hernando, Third Division].

<sup>19</sup> *Javelosa v. Tapus*, 835 Phil. 576 (2018) [Per J. Reyes, Jr., Second Division].

<sup>20</sup> The recognized exceptions are: (a) When the findings are grounded entirely on speculation, surmises, or conjectures; (b) When the inference made is manifestly mistaken, absurd, or impossible; (c) When there is grave abuse of discretion; (d) When the judgment is based on a misapprehension of facts; (e) When the findings of facts are conflicting; (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) When the CA's findings are contrary to those by the trial court; (h) When the findings are conclusions without citation of specific evidence on which they are based; (i) When the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *See Navaja v. Hon. de Castro*, 761 Phil. 142, 155 (2015) [Per J. Peralta, Third Division].



may re-examine the records to see if the CA made a reversible error that will warrant the exercise of this Court's discretionary appellate jurisdiction.<sup>21</sup>

Section 1 of Rule 70 of the Rules of Court, states:

SECTION 1. *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (Emphasis supplied)

Under the rule, the summary action for unlawful detainer may be filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld, after the termination of the right to hold possession by virtue of any contract, express or implied.<sup>22</sup> Contrary to the ruling of the MTCC and the RTC, the very nature of an action for unlawful detainer denotes that the plaintiff is not in actual physical possession of the land, as this element is only indispensable in an action for forcible entry.<sup>23</sup>

To sustain an action for unlawful detainer, the plaintiff must show the following requisites: (a) Initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (b) the possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (c) the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (d) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.<sup>24</sup>

The Court affirms the CA's judgment that these requisites were sufficiently established by the respondents.

*First*, respondents Tapao siblings stated that sometime in 1952, their parents, who were the original owners of Lot No. 6277, permitted the ancestors of petitioners to use the land as a temporary abode while the latter were trying to find their means of livelihood in Inoburan, Cebu. Petitioners' ancestors and their descendants stayed in the premises free of charge, out of pure benevolence on the part of respondents' parents. This shows that the occupation of petitioners and their predecessors-in-interest is lawful at the beginning since it was tolerated by respondents' parents.

<sup>21</sup> *Juan v. Yap, Sr.*, 662 Phil. 321 (2011) [Per J. Carpio, Second Division].

<sup>22</sup> *Diaz v. Spouses Punzalan*, 783 Phil. 456 (2016) [Per J. Peralta, Third Division].

<sup>23</sup> *Javelosa v. Court of Appeals*, 333 Phil. 331 (1996) [Per J. Puno, Second Division].

<sup>24</sup> *Spouses Liu v. Espinosa*, 858 Phil. 677, 683–684 (2019) [Per J. Hernando, Third Division].

*Second*, upon the death of their parents, respondents inherited the property, as shown in the tax declaration<sup>25</sup> now registered in their names. Although tax declarations and tax payments are not conclusive proofs of possession, these are good *indicia* of possession in the concept of an owner because no one would be paying taxes for a land that belongs to another. At the very least, these documents show that respondents have a valid claim of title over the property.<sup>26</sup>

*Third*, petitioners refused to vacate the subject property despite receipt of respondents' demand letter, thereby depriving the respondents of the rightful possession and use of the land.

*Finally*, there is no dispute that the action for unlawful detainer was filed by respondents within one year from petitioners' receipt of the demand letter.

As the new owners, respondents informed petitioners that they need to use the land and asked them to vacate the premises. At this point, the Court rules that petitioners became deforciant occupants who no longer have any right to possess the lot because of the withdrawal of tolerance by the owners.<sup>27</sup>

Anent petitioners' contention that the allegation of tolerance was not supported by any evidence, we find that Elesito's affidavit<sup>28</sup> sufficiently established how his parents allowed his mother's migrant cousins from Camotes Island to temporarily stay on the subject land. The affidavit attested to the fact that the occupation of petitioners and their ancestors of Lot No. 6277 was tolerated out of kindness of the deceased Spouses Tapao.<sup>29</sup> Elesito narrated that he even hired some of petitioners' relatives to work in his own construction company to give them a source of livelihood. After inheriting the lot being occupied petitioners and their forebears, he made known his intention to use the land, but the latter ignored his demand to vacate.<sup>30</sup>

Significantly, the Court notes that the Answer<sup>31</sup> filed by petitioners merely stated that the land they are occupying is different from the lot subject of the Complaint. To be sure, petitioners' bare denial is insufficient to overturn the CA's judgment. They did not adduce any evidence to prove their allegation regarding the identity of the land and the nature or basis of their alleged superior right to possess the lot in question.<sup>32</sup>

A person who occupies the land of another at the latter's tolerance or permission is bound by an implied promise that he or she will vacate the property upon demand. In this case, respondents' mother only allowed

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<sup>25</sup> *Rollo*, p. 63 and dorsal side.

<sup>26</sup> *Echanes v. Spouses Hailar*, 792 Phil. 724, 735 (2016) [Per J. Peralta, Third Division].

<sup>27</sup> *Leonin v. Court of Appeals*, 534 Phil. 544, 551 (2006) [Per J. Carpio Morales, Third Division].

<sup>28</sup> *Rollo*, p. 78.

<sup>29</sup> *Estate of Bueno v. Peralta, Jr.*, G.R. No. 248521, August 1, 2022 [Per J. Lopez, J., Second Division].

<sup>30</sup> *Rollo*, p. 78.

<sup>31</sup> *Id.* at 70–72.

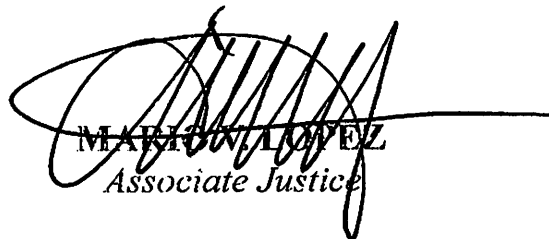
<sup>32</sup> *Teraña v. De Sagun*, 605 Phil. 22 (2009) [Per J. Brion, Second Division].

petitioners and their ancestors to occupy certain portions of the lot. Upon withdrawal of the tolerance, petitioners' refusal to vacate the premises rendered their possession as unlawful.<sup>33</sup>

Needless to state, the main issue in an unlawful detainer case is the physical or material possession of the property. Where the matter of ownership is raised by any of the parties, the Court may pass upon this question only to determine who has the better right of possession. The determination made on the matter of ownership is merely provisional and would not bar another action between the same parties involving title to the property.<sup>34</sup> In fine, the Court sees no reason to disturb CA's ruling that respondents have adequately proven that they are entitled to possess the subject lot as the owners thereof.


**ACCORDINGLY**, the Petition is **DENIED** for lack of merit. The March 28, 2018 Decision and January 26, 2021 Resolution of the Court of Appeals, Cebu City in CA-G.R. CEB-SP No. 07729, are **AFFIRMED**.

**SO ORDERED.**




MARICEL LOPEZ  
Associate Justice


**WE CONCUR:**



MARVIC M.V. F. LEONEN  
Senior Associate Justice  
Chairperson



AMY C. LAZARO-JAVIER  
Associate Justice



JHOSEP Y. LOPEZ  
Associate Justice



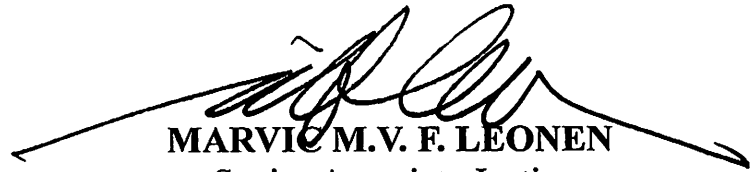
ANTONIO T. KHO, JR.  
Associate Justice

<sup>33</sup> *Arambulo v. Gungah*, 508 Phil. 612 (2005) [Per J. Quisumbing, First Division]

<sup>34</sup> *De los Reyes v. Spouses Odone*, 661 Phil. 676 (2011) [Per J. Nachura, Second Division], *Echaves v. Spouses Hailar*, 792 Phil. 724 (2016) [Per J. Feralta, Third Division].

**ATTESTATION**

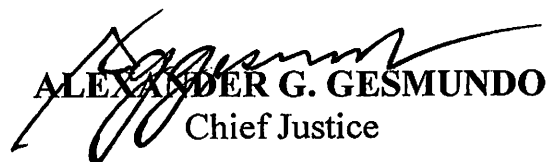
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M.V. F. LEONEN**  
Senior Associate Justice  
Chairperson

**CERTIFICATION**

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



**ALEXANDER G. GESMUNDO**  
Chief Justice