



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOE R. PAGARAO, JR. and G.R. No. 265223
REBECCA CABALLA,
Petitioners, Present:

- versus -

CAGUIOA, J., *Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH,* JJ.

IMMACULADA T. TRINIDAD,
Respondent.

Promulgated:
November 13, 2024
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DECISION

DIMAAMPAO, J.:

Called to fore in this Petition for Review on *Certiorari*¹ are the Decision² and the Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 168082. The impugned Decision upheld the judgment rendered by Branch 138, Regional Trial Court, Antipolo City (RTC),⁴ which, in turn, affirmed the Decision⁵ of the Municipal Trial Court of Cainta, Rizal (MTC) in an unlawful detainer case.⁶ The assailed Resolution denied the plea to reconsider the challenged Decision.

* On official business.

¹ *Rollo*, pp. 3–20.

² *Id.* at 21–38. The May 24, 2022 Decision was penned by Associate Justice Rafael Antonio M. Santos with the concurrence of Associate Justices Ramon M. Bato, Jr. and Lorenza R. Bordios of the Fourth Division, Court of Appeals, Manila.

³ *Id.* at 39–42. Dated January 11, 2023.

⁴ *Id.* at 104–109. The January 11, 2021 Decision in SCA No. 20-1710 was penned by Presiding Judge Rey R. Lor.

⁵ *Id.* at 98–103. The November 4, 2019 Decision in Civil Case No. MTC-19-0474 was penned by Presiding Judge Gwyn P. Calina.

⁶ *Id.* at 86–89.

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The undisputable facts of the case follow.

Respondent Immaculada T. Trinidad (Trinidad) is the owner of a parcel of land located along Audi Street, Cainta, Rizal, and covered by Transfer Certificate of Title No. 616372.⁷ Sometime in February 2015, petitioners Noe R. Pagarao, Jr. and Rebecca Caballa (Pagarao and Caballa) occupied the subject realty and constructed a modest structure, which served as their residence and place of business.⁸

In 2018, Trinidad discovered that Pagarao and Caballa were occupying her property. She verbally demanded them to vacate the premises, but Pagarao and Caballa pleaded that they be allowed to continue possessing the same. They offered to purchase the property for the sum of PHP 2.5 million. Trinidad agreed to the offer, subject to the execution of a written contract to sell. However, they requested that prior to such execution, Trinidad accept the partial payment of PHP 300,000.00 as proof of their serious intent to proceed with the sale.⁹ As a consequence, Trinidad allowed them to continue using and occupying the property.¹⁰

Later on, Pagarao and Caballa refused to sign or execute the contract to sell prepared by Trinidad. Their refusal impelled her to write them a letter demanding that they vacate the subject lot, but the same fell on deaf ears. On April 1, 2019, she was constrained to file before the MTC a complaint for unlawful detainer.¹¹

Ruling in Trinidad's favor, the MTC found that Pagarao and Caballa's possession of the disputed realty was initially lawful on the basis of the parties' agreement to enter into a contract to sell. Nevertheless, it became unlawful upon Pagarao and Caballa's refusal to vacate when so demanded by Trinidad.¹² The MTC disposed of the case, thusly:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of [respondent] **Immaculada Trinidad** and against [petitioners] **Noe R. Pagarao, Jr. and Rebecca Cabella**, who are ordered to:

- a) **VACATE** the property at Block 34, Lot 8, Audi St., Village East, Brgy. Sto Domingo, Cainta, Rizal covered by Transfer Certificate of Title No. 616372;
- b) **PAY** the sum of:

⁷ *Id.* at 23.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 24.

¹¹ *Id.*

¹² *Id.* at 100, MTC Decision.

- i. **[PHP] 10,000[.]00** every month representing reasonable compensation for the use and occupation of the property from the time of demand to vacate on February 21, 2019 which shall be deducted by the amount of **[PHP] 300,000.00** representing the earnest money;
- ii. **[PHP] 20,000.00** as attorney's fees;
- iii. **[PHP] 5,949[.]00** as costs of suit.

SO ORDERED.¹³ (Emphasis in the original)

On appeal before the RTC, Pagarao and Caballa argued that the MTC erred in failing to dismiss the case for lack of jurisdiction and lack of cause of action, considering that the complaint did not allege that their initial possession of the contested property was lawful.¹⁴ Ruling against them, the RTC affirmed *in toto* the judgment of the MTC and decreed that Trinidad had the right to evict Pagarao and Caballa.¹⁵ The RTC held further that while Trinidad had no knowledge as to when and how they began occupying the same, it was immaterial in view of the parties' subsequent agreement to execute a contract to sell.¹⁶

The case reached the CA as Pagarao and Caballa filed a petition for review.¹⁷ They contended that Trinidad failed to make out a case for unlawful detainer.¹⁸ Citing the Court's ruling in *Bugayong-Santiago v. Bugayong*,¹⁹ they asserted that an element of an action for unlawful detainer is lacking when forcible entry preceded possession by tolerance of the landowner.²⁰

In the repugned Decision, the petition was denied. The CA declared that unlike in *Bugayong*, Pagarao and Caballa's occupation of the property ripened into lawful possession when the parties entered into an agreement for its purchase.²¹

Unsuccessful in their bid for reconsideration, Pagarao and Caballa are now seeking the Court's reversal of the CA's issuances. They reiterate that if their possession was unlawful from the beginning, an action for unlawful detainer would not be the proper remedy and the complaint should therefore be dismissed.²²

¹³ *Id.* at 102–103.

¹⁴ *Id.* at 106, RTC Decision.

¹⁵ *Id.* at 109.

¹⁶ *Id.* at 107.

¹⁷ *Id.* at 21.

¹⁸ *Id.* at 30.

¹⁹ 822 Phil. 394 (2017) [Per J. Carpio, Second Division].

²⁰ *Rollo*, p. 30.

²¹ *Id.* at 35.

²² *Id.* at 14, Petition for Review.



In her comment,²³ Trinidad attaches little importance to what transpired prior to the parties' agreement to enter into a contract to sell. Rather, she contends that what carries more weight is the subsequent permission she gave to Pagarao and Caballa to use and occupy her property.

The Issue

The key issue in this case is whether the courts *a quo* correctly ruled that Trinidad properly availed of the remedy of unlawful detainer.

The Court's Ruling

After an exhaustive review of the records, the Court resolves to grant the Petition.

Unlawful detainer is a summary action for the recovery of possession of real property.²⁴ It may be filed by a 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.²⁵ Accordingly, this action will stand if the following jurisdictional facts are present:

- a. Initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
- b. Eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
- c. Thereafter, 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.²⁶

There have been many cases discussing the distinction between actions for unlawful detainer and those for forcible entry. However, the common thread has always been the Court's consistent adoption of the following precept—the border between forcible entry and unlawful detainer is defined

²³ *Id.* at 137–143.

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

²⁵ *Id.*

²⁶ *Id.*

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by the nature of the defendant's entry into or initial possession of the property. If the entry is illegal, then the action which may be filed against the intruder is forcible entry. If, however, the entry is legal but the possession thereafter becomes illegal, the case is unlawful detainer.²⁷ This robust principle is so well established that it remains true even if the owner later decides to tolerate the intruder's possession. As has been repeatedly avowed, such subsequent tolerance cannot convert an action for forcible entry into one for unlawful detainer.²⁸

The rationale behind this rule is simple, yet compelling. To hold otherwise would grant imprescriptibility to actions for forcible entry, allowing them to be filed beyond the one-year prescriptive period by merely invoking subsequent tolerance. In *Jose v. Alfuerio*,²⁹ the Court explained thus:

[T]olerance or permission must have been present at the beginning of possession; if the possession was unlawful from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed.

....

As the Court then explained, **a case for unlawful detainer alleging tolerance must definitely establish its existence from the start of possession; otherwise, a case for forcible entry can mask itself as an action for unlawful detainer and permit it to be filed beyond the required one-year prescription period from the time of forcible entry[.]**³⁰ (Emphasis in the original; citation omitted)

The above jurisprudential discourse was elaborated further in *Galacgac v. Bautista*,³¹ wherein this Court held:

A close assessment of the law and the concept of the word "tolerance" confirms our view heretofore expressed that **such tolerance must be present right from the start of possession** sought to be recovered, **to categorize a cause of action as one of unlawful detainer — not of forcible entry**. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons: *First*. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress — in the inferior court — provided for in the rules. If one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. *Second*. If a forcible entry action in the inferior court is allowed after the lapse of a number of years, then the result may well be that no action of forcible entry can really prescribe. No matter how long such

²⁷ *Zacarias v. Anacay*, 744 Phil. 201, 211 (2014) [Per J. Villarama, Jr., Third Division].

²⁸ *See Sabellina v. Buray*, 768 Phil. 224, 236 (2015) [Per J. Brion, Second Division].

²⁹ 699 Phil. 307 (2012) [Per J. Brion, Second Division].

³⁰ *Id.* at 319, 321.

³¹ 889 Phil. 379 (2020) [Per J. Lopez, Second Division].

defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court — upon a plea of tolerance to prevent prescription to set in — and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one-year time-bar to the suit is but in pursuance of the summary nature of the action.³² (Emphasis supplied; citation omitted)

In the case at bench, Trinidad herself disavowed any knowledge of the incidents surrounding Pagarao and Caballa's initial entry to the subject realty.³³ In her complaint, she admitted that she "does not know exactly when and by what manner or reason [Pagarao and Caballa] had occupied her lot."³⁴ Short of an explicit declaration to that effect, Pagarao and Caballa's entry was neither permitted nor tolerated by Trinidad. Needless to say, such admission runs counter to the requirement in an unlawful detainer case that tolerance should have been present from the very start of possession.

Parenthetically, the Court cannot sustain the decision of the courts *a quo* to grant Trinidad's complaint on the erroneous premise that Pagarao and Caballa's initial unlawful possession ripened into a legal one upon reaching an agreement with her for the purchase of the disputed lot.

Notwithstanding the parties' perfection of a contract to sell, Pagarao and Caballa's continued possession of the subject property was not based on the terms thereof but by virtue of the subsequent tolerance extended by Trinidad. In a contract to sell, ownership is reserved in the seller and is not transferred to the buyer until full payment of the purchase price.³⁵ Necessarily, the right of possession, being an incident of ownership, similarly remains with the seller unless otherwise provided by the parties. Hence, without full payment of the purchase price or an agreement conveying such right, a buyer's possession of a property that is the subject of a contract to sell would rest solely on the seller's tolerance. The case of *Keppel Bank Philippines, Inc. v. Adao*,³⁶ underscored this ruling and declared thus:

Nonetheless, in this case, the contract to sell does not by itself give respondent the right to possess the property. Unlike in a contract of sale, here in a contract to sell, there is yet no actual sale nor any transfer of title, until and unless, full payment is made. The payment of the purchase price is a positive suspensive condition, the failure of which is not a breach, casual or serious, but a situation that prevents the obligation of the vendor to convey title from acquiring an obligatory force. Respondent must have fully paid the price to acquire title over the property and the right to retain possession thereof. In cases of non-payment, the unpaid

³² *Id.* at 388.

³³ *See rollo*, p. 86.

³⁴ *Id.*

³⁵ *Agustin v. De Vera*, 851 Phi. 240, 253 (2019) [Per J. Caguioa, Second Division].

³⁶ 510 Phil. 158 (2005) [Per J. Quisumbing, First Division].

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seller can avail of the remedy of ejectment since he retains ownership of the property.

Considering that respondent failed to discharge the burden of proving payment, he cannot claim ownership of the property and his possession thereof was by mere tolerance. His continued possession became unlawful upon the owner's demand to vacate the property. We stress, however, that this adjudication, is only a provisional determination of ownership for the purpose of settling the issue of possession, and does not bar or prejudice an action between the same parties involving title to the property.³⁷ (Emphasis supplied)

In *Union Bank of the Phils. v. Maunlad Homes, Inc.*,³⁸ the Court similarly stated that the buyer's right to possess the property is extinguished when the contract to sell fails to materialize.³⁹ The failure of the buyer to make installment payments rendered the contract ineffective and without force and effect, consequently depriving them of the right to continue possession of the subject realty.⁴⁰

Guided by the foregoing considerations, the parties' agreement to enter into a contract to sell, by itself, did not alter the nature of Pagarao and Caballa's possession of the subject property – one that was initially unlawful but subsequently tolerated. That being said, the tolerance later extended by Trinidad cannot in effect afford her the remedy of an unlawful detainer. The appropriate course of action is still, distinctly, one for forcible entry.

Absent the jurisdictional element of prior lawful possession, the Court resolves to reverse the assailed issuances of the CA and to dismiss the complaint for unlawful detainer for lack of cause of action. However, this is not to say that Trinidad is left without recourse, as she may still institute other actions to protect her rights over her property.

FOR THESE REASONS, the instant Petition for Review on *Certiorari* is **GRANTED**. The May 24, 2022 Decision and the January 11, 2023 Resolution of the Court of Appeals in CA-G.R. SP No. 168082 are **REVERSED** and **SET ASIDE**. The April 1, 2019 complaint for unlawful detainer is **DISMISSED** for lack of cause of action.

SO ORDERED.


JAPAR B. DIMAAMPAO
Associate Justice

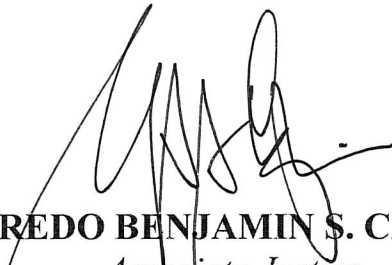
³⁷ *Id.* at 166–167.

³⁸ 692 Phil. 667 (2012) [Per J. Brion, Second Division].


³⁹ *See id.* at 679.

⁴⁰ *Id.* at 680.

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

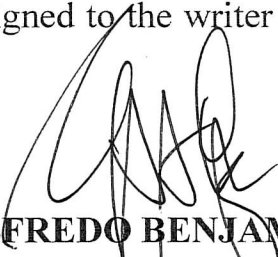

HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

On official business
MARIA FILOMENA D. SINGH
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.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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 this Court.


ALEXANDER G. GESMUNDO
Chief Justice