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JAN 16 2020



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
Petitioner, G. R. No. 214546
Present:

-versus-

PERALTA, J., Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

CITI APPLIANCE CORPORATION,
Respondent. M.C.

Promulgated:
October 9, 2019
Mis-DC Batt

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DECISION

LEONEN, J.:

An action for forcible entry must be filed within one (1) year from the date of actual entry on the land. However, when the entry was done through stealth, the one-year time bar is reckoned from the time the entry was discovered.¹ In contrast to unlawful detainer suits, no previous demand to vacate is required before an action for forcible entry may be filed.²

This Court resolves a Petition for Review³ filed by Philippine Long Distance Telephone Company (PLDT) assailing the Decision⁴ and

* On official leave.

¹ See *Diaz v. Spouses Punzalan*, 783 Phil. 456 (2016) [Per J. Peralta, Third Division].

² *Dikit v. Ycasiano*, 89 Phil. 44, 48 (1951) [Per J. Feria, First Division].

³ *Rollo*, pp. 14-46.

Resolution⁵ of the Court of Appeals, which ordered PLDT to realign its transmission lines and restitute the premises to Citi Appliance M.C. Corporation (Citi Appliance).

Since 1992, Citi Appliance has owned a parcel of land in Cebu City. Sometime in 2003, it decided to construct a 16-storey commercial building on it.⁶

The Cebu City Zoning Board required Citi Appliance to construct a one-level parking area consisting of 26 parking slots. To comply with this requirement, Citi Appliance had to make a deep excavation to lay the foundation of the parking lot. In the process, it discovered telephone lines, cables, and manholes underground, which had been placed there by PLDT sometime in 1983. These encroached on Citi Appliance's property, preventing it from excavating the land.⁷

In April 2003, Citi Appliance applied for exemption from the parking requirement, which the Cebu City Zoning Board initially granted on May 22, 2003.⁸ However, upon reconsideration, the Cebu City Zoning Board denied the exemption and required Citi Appliance to pay the parking exemption fee of ₱3,753,600.00.⁹

On April 26, 2004, Citi Appliance wrote PLDT, demanding that it remove the underground telephone lines, cables, and manholes, or to shoulder the parking exemption fee. On May 28, 2004, Citi Appliance made a final demand on PLDT to comply until June 15, 2004; otherwise, it would file an appropriate action in court.¹⁰

When PLDT still refused to comply, Citi Appliance filed a complaint for ejectment against PLDT.¹¹

In its Answer, PLDT alleged that its telephone lines, cables, and manholes did not encroach on Citi Appliance's property as they were properly positioned alongside and underneath a public sidewalk.¹² It later

⁴ Id. at 48–61. The Decision dated January 14, 2014 was penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Maria Luisa Quijano-Padilla of the Twentieth Division, Court of Appeals, Cebu City.

⁵ Id. at 65–68. The Resolution dated July 21, 2014 was penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla of the Former Twentieth Division, Court of Appeals, Cebu City.

⁶ Id. at 78.

⁷ Id. at 15–17.

⁸ Id. at 17.

⁹ Id. at 49.

¹⁰ Id. at 57.

¹¹ Id. at 49.

¹² Id. at 125, MTCC Decision.

filed an Amended Answer, arguing that the case should be dismissed since the action for forcible entry had prescribed.¹³ It expounded in its Position Paper that the one-year prescriptive period within which to bring an action for forcible entry based on stealth should be reckoned from the discovery of the alleged unlawful entry, not the last demand to vacate.¹⁴

Moreover, PLDT argued that the area in question was part of public domain, it being a sidewalk.¹⁵ Assuming that the property did belong to Citi Appliance, PLDT averred that it had the right of eminent domain.¹⁶

In its December 6, 2010 Decision,¹⁷ the Municipal Trial Court in Cities granted Citi Appliance's ejectment complaint. The dispositive portion of the Decision read:

WHEREFORE, premises considered, this complaint for EJECTMENT is hereby GRANTED. Defendants are (*sic*) hereby ordered to comply with the demand of the plaintiff to either realign its transmission lines as to allow the plaintiff to be able to implement its planned construction works on its own land or to pay the rent to the plaintiffs (*sic*) at the rate of P15,000.00 per month. Costs *de officio*.

SO ORDERED.¹⁸

After comparing the relocation plan submitted by PLDT with the geographical boundaries of Citi Appliance's property, the Municipal Trial Court in Cities found that PLDT's telephone lines, cables, and manholes were located within Citi Appliance's property.¹⁹

The Municipal Trial Court in Cities also ruled that the complaint for forcible entry was timely filed. Relying on *Philippine Overseas Telecommunications v. Gutierrez*,²⁰ it held that when unlawful entry was made clandestinely, the one-year prescriptive period should be counted from the last demand to vacate.²¹

As to PLDT's argument that the property was part of public domain, the Municipal Trial Court in Cities ruled that PLDT failed to proffer any evidence showing that these areas have been expropriated by the National Government and/or the City Government of Cebu. As to PLDT's claim of

¹³ Id. at 101, PLDT's Position Paper.

¹⁴ Id. at 104–105.

¹⁵ Id. at 106.

¹⁶ Id. at 109–110.

¹⁷ Id. at 124–132. The Decision was penned by Presiding Judge Monalila S. Tecson of Branch 1, Municipal Trial Court in Cities, Cebu City.

¹⁸ Id. at 132.

¹⁹ Id. at 130–131, MTCC Decision.

²⁰ 537 Phil. 682 (2006) [Per J. Austria-Martinez, First Division].

²¹ *Rollo*, p. 129.

eminent domain, it ruled that PLDT failed to show it properly exercised this right.²²

In its May 13, 2011 Resolution,²³ the Regional Trial Court affirmed with modification the Municipal Trial Court in Cities' Decision. The dispositive portion of its Resolution read:

WHEREFORE, foregoing premises considered, the decision of the first level court, Municipal Trial Court in Cities Branch 1 is UPHELD with MODIFICATION. Defendant-appellant is ordered to realign its transmission to allow plaintiff-appellee to implement its planned construction works on its own land; pending the said realignment, defendant-appellant is ordered to pay plaintiff-appellee rent at the monthly rate of FIFTEEN THOUSAND (P15,000.00) PESOS.

Defendant-appellant to pay the costs of the proceedings.

SO ORDERED.²⁴

As with the lower court, the Regional Trial Court also relied on *Philippine Overseas Telecommunications* and ruled that the one-year prescriptive period within which to bring an action for forcible entry based on stealth should be counted from the demand to vacate.²⁵

PLDT then filed a Petition for Review.²⁶ However, in its January 14, 2014 Decision,²⁷ the Court of Appeals affirmed the lower tribunals' findings. It further ruled that both restitution of the premises and payment of rents in arrears must be awarded to Citi Appliance. The dispositive portion of the Decision read:

WHEREFORE, the May 13, 2011 Resolution of the Regional Trial Court, Branch 14, Cebu City is AFFIRMED with MODIFICATION. The petitioner Philippine Long Distance and Telephone and (*sic*) Company (PLDT) is ordered to realign its transmission lines and retribute to the respondent Citi Appliance M.C. Corporation, the premises where these transmission lines are located on Lot No. 806-I. The petitioner is likewise ordered to pay monthly rental of Fifteen Thousand (P15,000.00) pesos to the respondent from the date of the last demand that was made on May 28, 2004.

SO ORDERED.²⁸

²² Id. at 129–132.

²³ Id. at 136–143. The May 13, 2011 Resolution was penned by Presiding Judge Raphael B. Yrastorza, Sr. of the Regional Trial Court, Branch 14, Cebu City.

²⁴ Id. at 143.

²⁵ Id. at 136–143.

²⁶ Id. at 48.

²⁷ Id. at 48–61.

²⁸ Id. at 60.

Citing *Elane v. Court of Appeals*,²⁹ *Ganancial v. Atillo*,³⁰ and *Philippine Overseas Telecommunications*, the Court of Appeals held that the one-year period within which to file a forcible entry case based on stealth should be counted from the time when demand to vacate was made.³¹

PLDT moved for reconsideration of the Decision. Later, it moved that a public survey be conducted to determine the exact location of the underground telephone lines, cables, and manholes. The Court of Appeals, however, denied both motions in its July 21, 2014 Resolution.³²

Aggrieved, PLDT filed before this Court a Petition for Review on Certiorari³³ assailing the Court of Appeals' Decision and Resolution.

Petitioner maintains that the Municipal Trial Court in Cities had no jurisdiction over the case since respondent Citi Appliance's action for forcible entry had prescribed. It contends that the one-year prescriptive period for forcible entry based on stealth should be reckoned from the discovery of the unlawful entry, not from the last demand to vacate.³⁴

According to petitioner, while there is no exact date when respondent discovered the underground telephone lines, cables, and manholes, it may be inferred that respondent made the discovery sometime before it applied for the parking exemption. Petitioner contends that the date of respondent's discovery should at least be reckoned from May 22, 2003, when the Cebu City Zoning Board initially granted respondent's application for exemption. Since respondent filed the ejectment suit on October 1, 2004, roughly one (1) year and four (4) months after it had discovered petitioner's alleged encroachment, the action had already prescribed.³⁵

Further arguing that the lower tribunals misconstrued *Elane*, *Ganancial*, and *Philippine Overseas Telecommunications*, petitioner asserts that in a forcible entry case based on stealth, it is illogical to reckon the prescriptive period from the date of demand, as it would render the summary nature of ejectment proceedings futile.³⁶ It submits that nothing in the cases cited tells that the one-year prescriptive period must be reckoned from the date of the last demand to vacate.³⁷ It adds that it cannot be ejected without being given a chance to exercise its right of eminent domain or to exercise

²⁹ 254 Phil. 826 (1989) [Per J. Regalado, Second Division].

³⁰ 121 Phil. 1249 (1965) [Per J. Paredes, En Banc].

³¹ *Rollo*, p. 57.

³² *Id.* at 65–68.

³³ *Id.* at 14–46.

³⁴ *Id.* at 28.

³⁵ *Id.* at 22.

³⁶ *Id.* at 28.

³⁷ *Id.* at 24–26.

its rights as a builder in good faith.³⁸

Petitioner avers that under Article 448 of the Civil Code, respondent may choose to acquire the installed lines and cables upon payment of indemnity, but until then, petitioner has the right to retain the land.³⁹ Hence, it should neither be ordered to pay rentals nor be immediately ejected from the premises.⁴⁰

Lastly, petitioner contends that its lines and cables are under the sidewalk, not on respondent's property. It asserts that a public survey will prove its claim, which was why it had moved for the conduct of a public survey. Thus, it submits before this Court that a public survey must be first be conducted to settle the issue.⁴¹

In its Comment,⁴² respondent argues that petitioner can no longer raise the Municipal Trial Court in Cities' lack of jurisdiction as an issue at this stage of the proceedings.⁴³ It points out that petitioner, in its Answer before the Municipal Trial Court in Cities, only raised the issue of jurisdiction over its person, not the jurisdiction over the subject matter of the case.⁴⁴

Assuming that petitioner's belated defense may be entertained, respondent contends that the lower tribunals correctly ruled on the reckoning point of the one-year prescriptive period.⁴⁵ Since respondent filed the ejectment suit within five (5) months after its last demand to vacate, the Municipal Trial Court in Cities had jurisdiction over the subject matter.⁴⁶

Moreover, respondent argues that petitioner's claim of right as a builder in good faith and right of eminent domain are raised belatedly only on appeal.⁴⁷

In its Reply,⁴⁸ petitioner argues that there is no cause of action for ejectment because the element of prior physical possession of respondent is absent.⁴⁹ Contrarily, it is petitioner who has prior physical possession since 1983, nine (9) years before respondent became the property owner.⁵⁰ Respondent's Certificate of Title was only issued on December 22, 1992,

³⁸ Id. at 29-34.

³⁹ Id. at 31.

⁴⁰ Id. at 34.

⁴¹ Id. at 37-39.

⁴² Id. at 182-190.

⁴³ Id. at 185.

⁴⁴ Id. at 185-186.

⁴⁵ Id. at 186.

⁴⁶ Id. at 186-187.

⁴⁷ Id. at 187.

⁴⁸ Id. at 221-230.

⁴⁹ Id. at 221.

⁵⁰ Id. at 221-222.

and the land had previously been owned by one Teofilo Pilapil.⁵¹

Petitioner stresses that the Municipal Trial Court in Cities lack jurisdiction as the case was filed by respondent more than one (1) year after the discovery of the alleged encroachment. Respondent discovered the manhole, telephone lines, and cables sometime in May 2003; thus, when it filed the complaint in October 2004, the one-year prescriptive period had already lapsed.⁵²

As to the reckoning period, petitioner reiterates that respondent's argument is illogical and renders the summary nature of ejectment meaningless, since a plaintiff can simply make a demand to vacate long after the discovery to circumvent the one-year time bar.⁵³

Moreover, petitioner again insists on the lower courts' misinterpretation of the cited cases and on its power of expropriation and rights as a builder in good faith.⁵⁴

The issues for this Court's resolution are the following:

First, whether or not the issue on lack of jurisdiction was deemed waived by petitioner Philippine Long Distance Telephone Company;

Second, whether or not the Municipal Trial Court in Cities has jurisdiction over the case, subsumed under which are the issues of: (1) whether or not the element of prior physical possession is present; and (2) whether the one-year prescriptive period of an action for forcible entry through stealth should be reckoned from the time the unlawful entry is discovered or from the last demand to vacate; and

Finally, whether or not petitioner may exercise its right of eminent domain and its right as a builder in good faith.

I

Respondent calls attention to petitioner's failure to raise the issue of jurisdiction over the subject matter in its Answer. Such failure, respondent claims, bars petitioner from questioning the Municipal Trial Court in Cities' jurisdiction on appeal.

⁵¹ Id. at 221.

⁵² Id. at 223.

⁵³ Id. at 224.

⁵⁴ Id. at 226.

Nevertheless, this Court pronounced in *Amoguis v. Ballado*⁶⁰ that the precedent set in *Tijam* is based on the doctrine of equity, which applies only in cases “where jurisdiction was raised at the very last minute when the parties have already gone through long years of litigation.”⁶¹ This Court further held:

Thus, *Tijam* will only apply when given the circumstances of a case, allowing the belated objection to the jurisdiction of the court will additionally cause irreparable damages, and therefore, injustice to the other party that relied on the forum and the implicit waiver.

In *Tijam*, this Court ruled that long delay in raising lack of jurisdiction is unfair to the party pleading laches because he or she was misled into believing that this defense would no longer be pursued. A delay of 15 years in raising questions on subject matter jurisdiction was appreciated by this Court as estoppel by laches.⁶²

In this case, petitioner is not barred from raising the issue of lack of jurisdiction. It raised the issue when it filed its Amended Answer with leave of court before the Municipal Trial Court in Cities. Thus, the issue of the court’s jurisdiction was seasonably raised.

Nevertheless, even if this Court disregards the Amended Answer, petitioner’s contention is not deemed barred by laches since it immediately questioned the court’s jurisdiction without allowing trial to stretch into years. The unique circumstances in *Tijam* are absent in this case. As we have noted in *Amoguis*, raising the lack of jurisdiction a little under a year, or even after the lapse of four (4) years, will not operate as estoppel against a party. Thus, as petitioner seasonably raised the court’s lack of jurisdiction, there is neither waiver of the jurisdictional issue nor estoppel against petitioner.

II

An action for ejectment is a summary proceeding meant “to provide an expeditious means of protecting actual possession or right of possession of property.”⁶³ In this special civil action, the title to the property is not involved. The only matter resolved is the question as to “who is entitled to the physical or material possession of the premises or possession *de facto*.”⁶⁴

⁶⁰ G.R. No. 189626, August 20, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64639>> [Per J. Leonen, Third Division].

⁶¹ Id.

⁶² Id.

⁶³ *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 183–184 (2001) [Per J. Gonzaga-Reyes, Third Division].

⁶⁴ Id. at 184.

Ejectment suits are designed “to prevent breach of the peace and criminal disorder and to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his.”⁶⁵ They discourage the parties deprived of possession of property to take the law into their own hands. Thus, ejectment proceedings are summary in nature to provide for a speedy settlement and action to recover possession, and quell social disturbances.⁶⁶

*Pitargue v. Sorilla*⁶⁷ is instructive:

The determination of the respective rights of rival claimants to public lands is different from the determination of who has the actual physical possession or occupation with a view to protecting the same and preventing disorder and breaches of the peace. A judgment of the court ordering restitution of the possession of a parcel of land to the actual occupant, who has been deprived thereof by another through the use of force or in any other illegal manner, can never be “prejudicial interference” with the disposition or alienation of public lands. On the other hand, if courts were deprived of jurisdiction of cases involving conflicts of possession, that threat of judicial action against breaches of the peace committed on public lands would be eliminated, and a state of lawlessness would probably be produced between applicants, occupants or squatters, where force or might, not right or justice, would rule.

It must be borne in mind that the action that would be used to solve conflicts of possession between rivals or conflicting applicants or claimants would be no other than that of forcible entry. This action, both in England and the United States and in our jurisdiction, is a summary and expeditious remedy whereby one in peaceful and quiet possession may recover the possession of which he has been deprived by a stronger hand, by violence or terror; its ultimate object being to prevent breach of the peace and criminal disorder. The basis of the remedy is mere possession as a fact, of physical possession, not a legal possession. The title or right to possession is never in issue in an action of forcible entry; as a matter of fact, evidence thereof is expressly banned, except to prove the nature of the possession.⁶⁸ (Citations omitted)

Rule 70 of the Rules of Court governs actions for ejectment. Section 1 of this Rule provides:

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

⁶⁵ *Pajuyo v. Court of Appeals*, 474 Phil. 557, 580–581 (2004) [Per J. Carpio, First Division].

⁶⁶ *Id.*

⁶⁷ 92 Phil. 5 (1952) [Per J. Labrador, En Banc].

⁶⁸ *Id.* at 12–13.

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.

There are two (2) kinds of actions that fall under summary ejectment, namely: (1) forcible entry; and (2) unlawful detainer.

In the earlier case of *Dikit v. Ycasiano*,⁶⁹ this Court made the distinction between the two (2) actions:

[F]orcible entry is the act of depriving a person of the material or actual possession of a land or building or of taking possession thereof by force, intimidation, threat, strategy or stealth, against the will or without the consent of the possessor; while unlawful detainer is the act of unlawfully withholding the possession of a land or building against or from a landlord, vendor, vendee or other persons, after the expiration or termination of the detainer's right to hold possession by virtue of a contract, express or implied.⁷⁰

With respect to possession, in forcible entry, the possession of the intruder is illegal at the outset because his or her "possession thereof is made against the will or without the consent of the former possessor."⁷¹ In unlawful detainer, by contrast, the possession is previously legal but becomes unlawful upon the expiration of one's right to possess the property after, for instance, the termination or violation of a lease contract.⁷²

Another difference rests in terms of a demand to vacate: "in an action of forcible entry, no previous demand to vacate is required by law before the filing of the action,"⁷³ while such demand is required in unlawful detainer.⁷⁴

This Court reiterated these differences in *Sumulong v. Court of Appeals*⁷⁵ adding that "in forcible entry, the plaintiff must allege in the complaint and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant, but in unlawful

⁶⁹ 89 Phil. 44 (1951) [Per J. Feria, First Division]. See also *Buenaventura v. Uy*, 233 Phil. 20 (1987) [Per J. Paras, Second Division]; *Spouses Muñoz v. Court of Appeals*, 288 Phil. 1001 (1992) [Per J. Medialdea, First Division]; and *Cajayon v. Spouses Batuyong*, 517 Phil. 648 (2006) [Per J. Tinga, Third Division].

⁷⁰ Id. at 48.

⁷¹ Id.

⁷² Id.

⁷³ Id. at 49.

⁷⁴ Id.

⁷⁵ 302 Phil. 392 (1994) [Per J. Davide, Jr., First Division].

detainer, the plaintiff need not have prior physical possession of the property[.]”⁷⁶

For forcible entry, the one-year prescriptive period is generally reckoned from the date of actual entry on the land.⁷⁷ However, if forcible entry is done through stealth, the period is counted from the time the plaintiff discovered the entry.⁷⁸ In marked contrast, the one-year period in unlawful detainer is counted from the date of the last demand to vacate.⁷⁹

Thus, the three (3) elements that must be alleged and proved for a forcible entry suit to prosper are the following:

(a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy or stealth; and, (c) that the action was filed within one (1) year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.⁸⁰ (Citation omitted)

In this case, petitioner contends that two (2) elements of forcible entry are absent: first, respondent has no prior physical possession of the property; and second, the action was filed beyond the one-year prescriptive period.

This Court agrees with petitioner.

II (A)

In *Quizon v. Juan*,⁸¹ this Court emphasized that the “fact of prior physical possession is an indispensable element in forcible entry cases.”⁸² For an action for forcible entry to prosper, the plaintiff must allege and prove that it was in prior physical possession of the property before the defendant encroached on the property.⁸³

Possession in ejectment cases means nothing more than physical or material possession, not legal possession.⁸⁴ It is not required that the complainant is the owner of the property.⁸⁵ If the issue of ownership is

⁷⁶ Id. at 405.

⁷⁷ *Spouses Ong v. Parel*, 407 Phil. 1045, 1053 (2001) [Per J. Gonzaga-Reyes, Third Division].

⁷⁸ Id. citing *Elane v. Court of Appeals*, 254 Phil. 826 (1989) [Per J. Regalado, Second Division].

⁷⁹ *Spouses Barnachea v. Court of Appeals*, 581 Phil. 337, 349 (2008) [Per J. Brion, Second Division].

⁸⁰ *Mangaser v. Ugay*, 749 Phil. 372, 381 (2014) [Per J. Mendoza, Second Division].

⁸¹ 577 Phil. 470 (2008) [Per J. Chico-Nazario, Third Division].

⁸² Id. at 480.

⁸³ Id.

⁸⁴ *Spouses Tirona v. Alejo*, 419 Phil. 285, 299 (2001) [Per J. Quisumbing, Second Division].

⁸⁵ *Spouses Maninang v. Court of Appeals*, 373 Phil. 304, 309 (1993) [Per J. Quisumbing, Second Division].

raised, the court may resolve this question only to determine the question of possession.⁸⁶

Here, petitioner claims that when it installed the lines and cables beneath the property, the property was not yet owned by respondent. Hence, it concludes that respondent had no prior physical possession of the property.

However, in ruling that there was prior physical possession, the Court of Appeals held that the complaint “contains specific allegations of possession and ownership”⁸⁷ and referred to respondent’s allegation:

Antecedent Facts

3. The Plaintiff is the lawful, absolute, and registered owner of a parcel of land, Lot No. 806-I, situated along cor. Osmeña Blvd. and Sanciangko Street, Cebu City, covered by TCT No. 123072[.]⁸⁸

A cursory reading of the complaint shows that respondent failed to allege its prior physical possession over the property. It merely submitted proof of ownership over the property, which is not sufficient to prove prior physical possession.⁸⁹ As held in *Dela Cruz v. Spouses Hermano*:⁹⁰

To prove their claim of having a better right to possession, respondents submitted their title thereto and the latest Tax Declaration prior to the initiation of the ejectment suit. As the CA correctly observed, petitioner failed to controvert these documents with competent evidence. It erred, however, in considering those documents sufficient to prove respondents’ prior physical possession.

Ownership certainly carries the right of possession, but the possession contemplated is not exactly the same as that which is in issue in a forcible entry case. Possession in a forcible entry suit refers only to possession de facto, or actual or material possession, and not one flowing out of ownership. These are different legal concepts under which the law provides different remedies for recovery of possession. Thus, in a forcible entry case, a party who can prove prior possession can recover the possession even against the owner. Whatever may be the character of the possession, the present occupant of the property has the security to remain on that property if the occupant has the advantage of precedence in time and until a person with a better right lawfully causes eviction.

⁸⁶ *Heirs of Laurorá v. Sterling Technopark III*, 449 Phil. 181, 186 (2003) [Per J. Panganiban, Third Division].

⁸⁷ *Rollo*, p. 52.

⁸⁸ *Id.* at 53.

⁸⁹ *Dela Cruz v. Spouses Hermano*, 757 Phil. 9, 21 (2015) [Per C.J. Sereno, First Division].

⁹⁰ 757 Phil. 9 (2015) [Per C.J. Sereno, First Division].

Similarly, tax declarations and realty tax payments are not conclusive proofs of possession. They are merely good indicia of possession in the concept of owner based on the presumption that no one in one's right mind would be paying taxes for a property that is not in one's actual or constructive possession.⁹¹ (Citations omitted)

Hence, in claiming that it had prior physical possession by virtue of its absolute ownership over the land, respondent is mistaken.⁹² An allegation of prior physical possession must be clearly stated in a complaint for forcible entry. It cannot equate possession as an attribute of ownership to the fact of actual prior physical possession.

Nevertheless, even if this Court were to rule that respondent's allegation of prior physical possession is sufficient, the action for forcible entry must still fail for being filed beyond the one-year prescriptive period.

II (B)

Respondent insists on the Court of Appeals' ruling that based on *Elane, Ganancial*, and *Philippine Overseas Telecommunications*, the one-year prescriptive period should be reckoned from the date of the last demand to vacate.

A judicious review of these cases and jurisprudence, both old and recent, reveals that the one-year time bar in forcible entry cases is reckoned from the date of discovery of the encroachment, not from the date of the last demand to vacate.

In the 1965 case of *Ganancial*,⁹³ Hilario Ganancial (Ganancial) filed a complaint for forcible entry against Leonardo Atillo (Atillo) on April 24, 1961. He alleged that on February 6, 1960, Atillo occupied his property through strategy, stealth, and force. When the Municipal Court's jurisdiction was questioned, Ganancial argued that the one-year prescriptive period should be counted from February 3, 1961, the date when he sent the notice to vacate.

In resolving the case, this Court ruled that the Municipal Court had no jurisdiction over the ejectment suit because the reckoning point of the prescriptive period is the date of dispossession, not the date of demand to vacate. In so ruling:

⁹¹ Id. at 21.

⁹² *Spouses Gonzaga v. Court of Appeals*, 570 Phil. 130, 140 (2008) [Per J. Velasco, Jr., Second Division].

⁹³ *See Ganancial v. Atillo*, 121 Phil. 1249 (1965) [Per J. Paredes, En Banc].

the owner could not have known beforehand that someone else possessed his or her property; thus, he or she could not have tolerated the possession of the intruder. As held in *Canlas v. Tubil*,¹⁰² possession by tolerance falls under unlawful detainer because it is a possession that was initially lawful but later became unlawful when the possessor by tolerance refuses to comply with the owner's demand to vacate. Thus, in *Vda. de Prieto*, the reckoning point for actions for forcible entry through stealth should be the date of the discovery of the entry, not the date of demand to vacate.

Unfortunately, this error was replicated in subsequent cases, including *Philippine Overseas Telecommunications*. Nonetheless, subsequent cases have already clarified the rules on forcible entry.

In *Spouses Barnachea v. Court of Appeals*,¹⁰³ this Court ruled that in forcible entry suits, "the law does not require a previous demand . . . to vacate the premises, and . . . the action can be brought only within one-year from the date the defendant actually and illegally entered the property."¹⁰⁴

In *Dela Cruz*,¹⁰⁵ this Court held that the prescriptive period in a forcible entry case is generally counted from the date of actual entry into the land—except when this entry was made through stealth, in which case, the period is reckoned from the time of discovery.¹⁰⁶ Similarly, in *Diaz v. Spouses Punzalan*:¹⁰⁷

[I]n an action for forcible entry, the following requisites are essential for the MTC to acquire jurisdiction over the case: (1) the plaintiff must allege prior physical possession of the property; (2) the plaintiff was deprived of possession by force, intimidation, threat, strategy or stealth; and (3) *the action must be filed within one (1) year from the date of actual entry on the land, except that when the entry is through stealth, the one (1)-year period is counted from the time the plaintiff-owner or legal possessor learned of the deprivation of the physical possession of the property.* It is not necessary, however, for the complaint to expressly use the exact language of the law. For as long as it is shown that the dispossession took place under said conditions, it is considered as sufficient compliance with the requirements.¹⁰⁸ (Emphasis supplied, citation omitted)

The one-year prescriptive period is a jurisdictional requirement¹⁰⁹ consistent with the summary nature of ejectment suits.¹¹⁰ In *Sarona v.*

¹⁰² 616 Phil. 915 (2009) [Per J. Ynares-Santiago, Third Division].

¹⁰³ 581 Phil. 337 (2008) [Per J. Brion, Second Division].

¹⁰⁴ Id. at 346.

¹⁰⁵ 757 Phil. 9 (2015) [Per C.J. Sereno, First Division].

¹⁰⁶ Id. at 18.

¹⁰⁷ 783 Phil. 456 (2016) [Per J. Peralta, Third Division].

¹⁰⁸ Id. at 462.

¹⁰⁹ *Spouses Barnachea v. Court of Appeals*, 581 Phil. 337, 349 (2008) [Per J. Brion, Second Division].

¹¹⁰ *Diaz v. Spouses Punzalan*, 783 Phil. 456, 462 (2016) [Per J. Peralta, Third Division].

Villegas,¹¹¹ this Court made a distinction between unlawful detainer and forcible entry in discussing the implication of the one-year prescriptive period for forcible entry cases. It stated:

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 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.¹¹² (Citation omitted)

Here, a review of respondent's own narration of facts reveals that it discovered the underground cables and lines in April 2003 when it applied for exemption from the parking slot requirement with the Cebu City Zoning Board. Respondent's complaint is telling:

Causes of Action

....

10. In its honest effort to remedy the situation and in order to immediately start its construction of the building without removing Defendant's underground telephone lines, cables and manholes, the Plaintiff had applied for exemption of the required number of parking slots but was denied[.]¹¹³

Counting from this date, the one-year prescriptive period to file the forcible entry suit had already lapsed sometime in April 2004. Thus, by the time the complaint for forcible entry was filed on October 1, 2004, the period had already prescribed. The Municipal Trial Court in Cities, therefore, no longer had jurisdiction to resolve the case.

III

Petitioner argues that it should be allowed to exercise its right of eminent domain under its franchise or its right as a builder in good faith. In

¹¹¹ 131 Phil. 365 (1968) [Per J. Sanchez, En Banc].

¹¹² Id. at 373.

¹¹³ *Rollo*, p. 79.

claiming so, petitioner avers that when it installed the cables and lines underground, it was acting in good faith, believing that the land was underneath the public sidewalk. Moreover, transferring the cables and lines would cost millions of pesos and inconvenience its subscribers.¹¹⁴ On the other hand, respondent contends that these arguments were raised only on appeal.¹¹⁵

The records show that these arguments were already raised by petitioner in its Answer and Position Paper,¹¹⁶ and were even addressed in the Municipal Trial Court in Cities' Decision.¹¹⁷ Thus, this Court may proceed to resolve the substantive issues.

On asserting its right as a builder in good faith, petitioner cited Article 448 of the Civil Code, which provides:

ARTICLE 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

This provision refers to a land owned by two (2) or more parties, one (1) of whom has built some works, sown, or planted something.¹¹⁸ Under Article 526 of the Civil Code, the rule on good faith is used in determining whether a builder, sower, or planter acted in good faith.¹¹⁹

In *Mercado v. Court of Appeals*,¹²⁰ this Court ruled that a person claiming to be a builder in good faith must be a possessor in the concept of an owner. Thus:

To be deemed a builder in good faith, it is essential that a person assert title to the land on which he builds; i.e., that he be a possessor in concept of owner, and that he be unaware "that there exists in his title or mode of acquisition any flaw which invalidates it." It is such a builder in good faith who is given the right to retain the thing, even as against the real

¹¹⁴ Id. at 29–31.

¹¹⁵ Id. at 187.

¹¹⁶ Id. at 157.

¹¹⁷ Id. at 129–132.

¹¹⁸ *Pecson v. Court of Appeals*, 314 Phil. 313, 322 (1995) [Per J. Davide, Jr., First Division].

¹¹⁹ Id.

¹²⁰ 245 Phil. 49 (1988) [Per J. Narvasa, First Division].

owner, until he has been reimbursed in full not only for the necessary expenses but also for useful expenses. On the other hand, unlike the builder in good faith, a lessee who “makes in good faith useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased,” can only claim payment of “one-half of the value of the improvements” or, “should the lessor refuse to reimburse said amount, . . . remove the improvements, even though the principal thing may suffer damage thereby.”¹²¹ (Citations omitted)

In this case, petitioner’s assertion of right over the property is not in the concept of an owner. In contrast, petitioner claims that the property is owned either by the government or a certain Teofilo Pilapil when it installed the lines and cables. Thus, petitioner’s argument that it should be allowed to exercise its right under Article 448 is untenable.

Moreover, squarely raised in this case is whether the subterranean portion of a titled property is included in the rights of the surface owner.

Rights over lands are indivisible. It is well-settled that the owner of a parcel of land has rights not only to the land’s surface, but also to everything underneath and the airspace above it up to a reasonable height.¹²² Article 437 of the Civil Code states:

ARTICLE 437. The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation.

This principle is embodied in several rules pertaining to land rights. For instance, Article 438 of the Civil Code determines that hidden treasure underground belongs to the owner of the land, building, or property.¹²³ Moreover, mining rights may be given to a mining applicant despite the surface being titled to another by government, subject only to compensation. In *National Power Corporation v. Ibrahim*:¹²⁴

¹²¹ Id. at 60.

¹²² *Republic v. Court of Appeals*, 243 Phil. 381, 390–391 (1988) [Per J. Cruz, First Division].

¹²³ CIVIL CODE, art. 438 provides:

ARTICLE 438. Hidden treasure belongs to the owner of the land, building, or other property on which it is found.

Nevertheless, when the discovery is made on the property of another, or of the State or any of its subdivisions, and by chance, one-half thereof shall be allowed to the finder. If the finder is a trespasser, he shall not be entitled to any share of the treasure.

If the things found be of interest to science or the arts, the State may acquire them at their just price, which shall be divided in conformity with the rule stated.

¹²⁴ 553 Phil. 136 (2007) [Per J. Azcuna, First Division].

Registered landowners may even be ousted of ownership and possession of their properties in the event the latter are reclassified as mineral lands because real properties are characteristically indivisible. For the loss sustained by such owners, they are entitled to just compensation under the Mining Laws or in appropriate expropriation proceedings.¹²⁵ (Citation omitted)

In this case, the existence of petitioner's cables affected the right of the surface owner to make use of its right to possess. This can be considered a burden, which may be removed by forcible entry or unlawful detainer actions.

As to petitioner's assertion of its right of eminent domain, this Court finds that this claim cannot be properly resolved in a complaint for forcible entry or unlawful detainer.

"Eminent domain or expropriation is the inherent right of the state to condemn private property to public use upon payment of just compensation."¹²⁶ This power is exercised by the legislature and may be delegated to local governments, other public entities, and public utilities.¹²⁷

In exercising the power of eminent domain, the following requirements must concur:

(1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public purpose or otherwise informally, appropriately or injuriously affected; and (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.¹²⁸ (Citation omitted)

Expropriation may be judicially claimed only by filing a complaint for expropriation. Inverse expropriation is a claim for compensation by the deprived landowner as a complaint or as a counterclaim. It seeks to recover the value of property taken, even though there is no formal exercise of the power of eminent domain.¹²⁹ Normally, it is the expropriator—the State—that files the complaint.

¹²⁵ Id. at 147.

¹²⁶ *Heirs of Pidacan v. ATO*, 552 Phil. 48, 55 (2007) [Per J. Quisumbing, Second Division].

¹²⁷ *Forfom Development Corporation v. Philippine National Railways*, 594 Phil. 10, 27 (2008) [Per J. Chico-Nazario, Third Division].

¹²⁸ Id.

¹²⁹ *National Power Corporation v. Heirs of Sangkay*, 671 Phil. 569, 591 (2011) [Per J. Bersamin, First Division].

Expropriation is a special civil action with a special bifurcated trial. In *National Power Corporation v. Jocson*:¹³⁰

The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, 'of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint.' An order of dismissal, if this be ordained, would be a final one, of course, since it finally disposes of the action and leaves nothing more to be done by the Court on the merits. So, too, would an order of condemnation be a final one, for thereafter as the Rules expressly state, in the proceedings before the Trial Court, 'no objection to the exercise of the right of condemnation (or the propriety thereof) shall be filed or heard.'

The second phase of the eminent domain action is concerned with the determination by the court of 'the just compensation for the property sought to be taken.' This is done by the Court with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too. It would finally dispose of the second stage of the suit, and leave nothing more to be done by the Court regarding the issue[.]¹³¹ (Citations omitted)

An expropriation suit falls under the jurisdiction of the regional trial court because it is a case incapable of pecuniary estimation. It deals with the government's exercise of its authority and right to take property for public use.¹³²

The right of an expropriator to file a complaint for expropriation is not allowed in an action such as a forcible entry or unlawful detainer suit. These actions are summary in nature. Therefore, in this case, this Court cannot award expropriation.

Nevertheless, the resolution of this case is without prejudice to the filing of a separate case for expropriation.


¹³⁰ 283 Phil. 446 (1992) [Per J. Davide, Jr., En Banc].

¹³¹ Id. at 465.

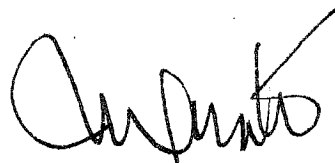
¹³² *Bardillon v. Barangay Masili of Calamba, Laguna*, 450 Phil. 521, 528 (2003) [Per J. Panganiban, Third Division].

WHEREFORE, the Petition is **GRANTED**. The January 14, 2014 Decision and July 21, 2014 Resolution of the Court of Appeals in CA-G.R. CEB SP No. 06366 are **SET ASIDE**.


SO ORDERED.

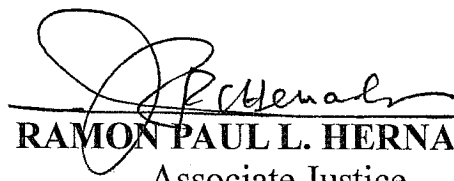

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice
Chairperson

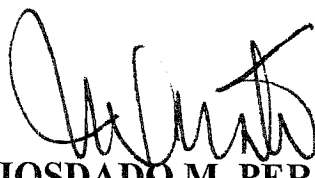

ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice

On official leave
HENRI JEAN PAUL B. INTING
Associate Justice

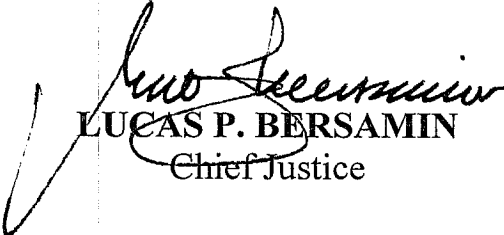
ATTESTATION

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.


DIOSDADO M. PERALTA
Associate Justice
Chairperson

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.



LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

Mis-DC Batt
MISAEEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

JAN 16 2020