

Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Laditan
WILFREDO V. LADITAN
Division Clerk of Court
Third Division
NOV 10 2016

THIRD DIVISION

THAMERLANE M. PEREZ,
Petitioner,

G.R. No. 211539

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, JJ.

DOMINADOR RASACEÑA,
PRISCILLA NAVARRO and
ADELFA LIM,
Respondents.

Promulgated:

October 17, 2016

X-----*Wilfredo V. Laditan*-----X

DECISION

PERALTA, J.:

For this Court's Resolution is a Petition for Review on *Certiorari* filed by petitioner Thamerlane M. Perez assailing the Decision¹ dated July 29, 2013 and Resolution² dated March 4, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 124234. The CA reversed the Decision³ dated September 30, 2011 of the Regional Trial Court (RTC) of Manila, Branch 42, in Civil Case No. 11-125644, which affirmed the April 13, 2011 Metropolitan Trial Court (MeTC) Decision.⁴

The factual and procedural antecedents follow.

¹ Penned by Associate Justice Florito S. Macalino, with Associate Justices Normandie B. Pizarro and Pedro B. Corales, concurring, *rollo*, pp. 22-29.

² *Id.* at 30-31.

³ Penned by Judge Dinnah C. Aguila Topacio; *id.* at 124-126.

⁴ Penned by Judge J. Ermin Ernest Louie R. Miguel; *id.* at 85-88.

The dispute centers on the right of possession of the subject property denominated as Lot 28, Block No. 2 located at 800 Loyola Street corner San Diego Street, Sampaloc, Manila, with a total area of 187.50 square meters, more or less, covered by Transfer Certificate of Title (TCT) No. 284213 registered under the name of LNC 3 Asset Management, Inc. (LNC).

On August 18, 2010, petitioner filed a Complaint⁵ for unlawful detainer before the MeTC of Manila, Branch 11 against respondents Dominador Rasaceña, Priscilla Navarro, and Adelfa Lim. He alleged that he is the absolute owner of the property in controversy. He acquired the property from LNC through a Deed of Conditional Sale dated January 13, 2010 and, subsequently, through a Deed of Absolute Sale dated July 29, 2010. The previous owner, LNC, tolerated respondents' occupancy of the subject property.

In a letter dated April 19, 2010, petitioner, through his counsel, demanded respondents to vacate the property, but the latter refused to heed. At the proceedings initiated by petitioner before the *Lupong Tagapamayapa* of *Barangay 521*, Manila, the parties failed to settle amicably. Hence, the complaint, praying that respondents be ordered to vacate the premises and restore the possession of the property to the petitioner; to pay a reasonable rent in the amount of ₱30,000.00 for the use and occupation of the same; and, to pay ₱100,000.00 as moral damages, ₱30,000.00 as attorney's fees and costs.

In their Answer with Counterclaim,⁶ respondents alleged that they leased the property from Agus Development Corporation (*Agus*). They contended that: the court has no jurisdiction over the person of the respondents; the case is barred by prior judgment or *res judicata*; there is no lessor-lessee relationship between the parties; petitioner has no cause of action against respondents; and the condition precedent for the filing of the complaint was not complied with as there was no demand to vacate.

In a Decision dated April 13, 2011, the MeTC ruled in favor of petitioner, with the following dispositive portion:

WHEREFORE, judgment is hereby rendered in favor of [petitioner] and against the [respondents]. The court orders the [respondents]:

1. To immediately vacate and peacefully surrender the possession of the occupied subject premises located

⁵ *Id.* at 32-36.

⁶ *Id.* at 46-50.

- at 800 Loyola corner San Diego Streets, Sampaloc, Manila;
2. To pay the [petitioner] [P]5,000.00 as reasonable monthly compensation for the use and occupancy of the premises beginning April 2010 and every month thereafter until [respondents] shall have finally and actually vacated the subject premises;
 3. To pay the amount of [P]10,000.00 as and for attorney's fees;
 4. To pay the costs of the suit.

SO ORDERED.⁷

Thereafter, respondents elevated the case before the RTC of Manila. On September 30, 2011, the RTC affirmed *in toto* the Decision of the MeTC.

Aggrieved, respondents filed a petition for review before the CA. The CA reversed and set aside the decision of the RTC. Petitioner failed to prove that his predecessor-in-interest tolerated respondents' possession of the property. He did not offer any evidence attesting that LNC tolerated the occupation. His complaint was silent as to the factual circumstances surrounding the alleged tolerance, or averment of an overt act indicative of LNC's permission. The CA considered the Deed of Absolute Sale from which petitioner anchors his right of possession highly dubious and questionable because: the same was not registered with the proper Registry of Deeds; no affidavit of the lawyer who notarized the same was submitted; and there was no proof of authority of the persons who signed in the contract for LNC. The *fallo* of the decision reads:

WHEREFORE, premises considered, the petition is GRANTED. The September 30, 2011 Decision and the February 24, 2012 Omnibus Order of the Regional Trial Court of Manila, Branch 42 in Civil Case No. 11-125644 are REVERSED and SET ASIDE. Civil Case No. 187245-CV for unlawful detainer filed by Thamerlane M. Perez against Dominador Rasaceña, Priscilla Navarro and Adelfa Lim before the Metropolitan Trial Court, Branch 11 of Manila is hereby DISMISSED.

SO ORDERED.⁸

On March 4, 2014, the CA denied the motion for reconsideration filed by petitioner.⁹

Hence, the instant petition, raising the following issues:

⁷ *Id.* at 87-88.

⁸ *Id.* at 28.

⁹ *Id.* at 30-31.

- I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, GRAVELY ERRED IN RULING THAT PETITIONER FAILED TO ALLEGE AND PROVE THAT RESPONDENTS['] POSSESSION WAS BY MERE TOLERANCE OF HIS PREDECESSORS-IN-INTEREST.
- II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, WITH DUE RESPECT, GRAVELY ERRED IN RULING THAT THE DEED OF ABSOLUTE SALE OF THE PETITIONER IS HIGHLY DUBIOUS AND QUESTIONABLE CONSIDERING THAT THE SAME WAS NOT REGISTERED WITH THE PROPER REGISTRY OF DEEDS; NO AFFIDAVIT BY THE LAWYER WHO NOTARIZED THE SAME WAS SUBMITTED AND NO PROOF WAS SHOWN THAT THE PERSONS WHO SIGNED FOR THE REGISTERED OWNER, LNC ASSET MANAGEMENT, INC., WERE AUTHORIZED TO DO SO.¹⁰

To begin with, in summary ejectment suits such as unlawful detainer and forcible entry, the only issue to be determined is who between the contending parties has better possession of the contested property. The Municipal Trial Courts, Metropolitan Trial Courts in Cities, and the Municipal Circuit Trial Courts exercise exclusive original jurisdiction over these cases and the proceedings are governed by the Rules on Summary Procedure.¹¹ The summary character of the proceedings is designed to quicken the determination of possession *de facto* in the interest of preserving the peace of the community, but the summary proceedings may not be proper to resolve ownership of the property. Consequently, any issue on ownership arising in forcible entry or unlawful detainer is resolved only provisionally for the purpose of determining the principal issue of possession.¹²

We note that the arguments raised here would necessarily require a re-evaluation of the parties' submissions and the CA's factual findings. Ordinarily, this course of action is proscribed in a petition for review on *certiorari*, *i.e.*, a Rule 45 petition resolves only questions of law. By way of exception, however, the Court resolves factual issues when the findings of the MTCC and the RTC differ from those of the CA, as in the case at bar.¹³

Petitioner averred that he sufficiently alleged in his Complaint and established that respondents' possession of the subject property is by mere tolerance of his predecessor-in-interest. That LNC has allowed several years to pass without requiring respondents to vacate the premises nor filed an

¹⁰ *Id.* at 11.

¹¹ *Norbete, Jr. v. Mejia*, G.R. No. 182886, March 9, 2015, 752 SCRA 120, 124.

¹² *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*, G.R. No. 161589, November 24, 2014, 742 SCRA 426, 441.

¹³ *Nenita Quality Foods Corp. v. Galabo, et al.*, 702 Phil. 506, 515 (2013).



ejectment case against them supports the fact that LNC has acquiesced to respondents' possession and use of the property.

It is settled that a complaint sufficiently alleges a cause of action for unlawful detainer if it states the following:

- (a) Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;
- (b) Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession;
- (c) Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and
- (d) Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment.¹⁴

A review of petitioner's complaint shows that: (a) by tolerance of the previous owner, LNC, respondents were allowed to occupy the property on the promise to vacate upon demand; (b) in a letter dated April 19, 2010, petitioner demanded the respondents to vacate the property; (c) the respondents refused to vacate; (d) petitioner filed the complaint on August 18, 2010 or within one year from the formal demand to vacate was made. Clearly, the Complaint established a case for unlawful detainer as to vest the MeTC jurisdiction over it.

Case law introduced the concept of possession by tolerance in ejectment cases as follows – upon failure of the tenant to pay the stipulated rents, the landlord might consider the contract broken and demand immediate possession of the rented property, thus, converting a legal possession into illegal possession. However, the landlord might choose to give the tenant credit for the payment of the rents and allow him to continue indefinitely in the possession of the property, such that during that period, the tenant would not be in illegal possession of the property and the landlord could not maintain an action of *desahucio* until after the latter had taken steps to convert the legal possession into illegal possession.¹⁵

As held in *Canaynay v. Sarmiento*:¹⁶

x x x There is no legal obstacle for the owner to allow a defaulting tenant to remain in the rented property one month, one year, several years, or even decades. That consent, no matter how long it may last, makes lawful

¹⁴ *Macaslang v. Spouses Zamora*, 664 Phil. 337, 351 (2011).

¹⁵ *Lucido and Lucido v. Vita*, 25 Phil. 414, 425 (1913), as cited in *Dela Cruz v. Court of Appeals*, 539 Phil. 158, 176 (2006).

¹⁶ 79 Phil. 36 (1947).

tenant's possession. Only when that consent is withdrawn and the owner demands tenant to leave the property is the owner's right of possession asserted and the tenant's refusal or failure to move out makes his possession unlawful, because it is violative of the owner's preferential right of possession.¹⁷

We further elucidated the concept of possession by mere tolerance in *Calubayan, et al. v. Pascual*,¹⁸ thus:

x x x In allowing several years to pass without requiring the occupant to vacate the premises nor filing an action to eject him, plaintiffs have acquiesced to defendant's possession and use of the premises. It has been held that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against them. x x x.

x x x x

Even assuming, for the sake of argument, that the various notifications for defendant to see the plaintiffs could be construed as demands upon the defendant to vacate, **the length of time that defendant detained the premises is to be reckoned with from the date of the last demand. Plaintiffs' failure to file an action in court shortly after defendant had ignored their previous notices is to be considered as a waiver on their part to eject the defendant in the meantime.**

x x x.¹⁹

A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess. To show that the possession was initially lawful, the basis of such lawful possession must then be established. Acts of tolerance must be proved showing the overt acts indicative of his or his predecessor's tolerance or permission for him to occupy the disputed property.²⁰

To establish the tolerance on the part of petitioner's predecessor, petitioner presented a letter²¹ dated October 15, 2002 wherein Agus apprised one Isidra Millanes, who was a lessee on a month-to-month basis, the transfer of ownership of Lot No. 28, Block No. 2 at 800 Loyola Street corner San Diego Street, Sampaloc, Manila to Metropolitan Bank and Trust Company (*Metrobank*); and a letter dated March 25, 2004, wherein

¹⁷ *Canaynay v. Sarmiento, supra*, at 40.

¹⁸ 128 Phil. 160 (1967).

¹⁹ *Calubayan, et al. v. Pascual, supra*, at 163-164. (Emphases supplied)

²⁰ *Quijano v. Amante*, G.R. No. 164277, October 8, 2014, 737 SCRA 552, 564-565.

²¹ *Rollo*, p. 73.

Metrobank, through its counsel, demanded the spouses Ricardo and Precilla²² Navarro and all persons claiming title or rights under him to vacate the premises and pay rental in arrears.²³

Respondents, as lessees of Agus and then Metrobank, were the legal possessors of the subject property by virtue of a contract of lease. Metrobank's failure to file an action in court shortly after respondents failed to heed to its demand to vacate in 2004 was a waiver on its part to eject respondents in the meantime. It would appear that Metrobank permitted or tolerated respondents' possession of the property even before LNC acquired the property and eventually sold the same to petitioner. It can be surmised that LNC maintained the *status quo*. Otherwise, petitioner would not have found respondents on the premises. Hence, petitioner was able to establish that respondents' possession was by tolerance of his predecessors. As such, they are necessarily bound by an implied promise that they will vacate upon demand, *failing which a summary action for ejectment is the proper remedy against them.*²⁴

With the issue on possession by tolerance settled, We now scrutinize the issue of who is entitled to physical possession of the property or possession *de facto*.

To reiterate, 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. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property.²⁵

In the case at bar, petitioner anchors his claim of ownership and right to possess the property on the strength of a notarized Deed of Conditional Sale and a notarized Deed of Absolute Sale between him and LNC.

The CA opined that the Deed of Absolute Sale invoked by petitioner is highly dubious and questionable considering that the same was not registered with the proper Registry of Deeds, no affidavit by the lawyer who notarized the same was submitted, and no proof was shown that the persons who signed for LNC were authorized to do so.



²² As spelled in the demand letter.

²³ *Rollo*, p. 74.

²⁴ *Calubayan, et al. v. Pascual, supra* note 18, at 163.

²⁵ *Barrientos v. Rapal*, 669 Phil. 438, 444 (2011).

We disagree. There is no rule which requires a party, who relies on a notarized deed of sale for establishing his ownership, to present further evidence of such deed's genuineness lest the presumption of its due execution be for naught.²⁶ Regarded as evidence of the facts therein expressed in a clear, unequivocal manner, public documents enjoy a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity. The burden of proof to overcome said presumptions lies with the party contesting the notarial document.²⁷

We note that the respondents presented a Certification dated November 15, 2011 that the Notary Public who signed and affixed his notarial seal on the deed has not yet submitted his notarial report for 2010 intending to prove that the deed was not a public document.²⁸ However, the same was only alleged and offered before the CA. Basic consideration of due process impels the rule that points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal.²⁹ It is erroneous for the CA to base its ruling that the deed is dubious on the certification that was not presented before the trial courts. As such, respondents failed to present clear and convincing evidence as to overcome the presumption of regularity of the notarized deed, from which petitioner anchored his claim of ownership.

As to respondents, it appears that they initially admitted that they were lessees of Agus. They merely denied petitioner's ownership and contested the notarized deed of sale through bare allegations. According to respondents, petitioner has no right to demand on April 19, 2010 for them to vacate since the alleged undated deed of absolute sale was notarized on July 29, 2010. Thus, there was no demand to vacate the premises. On appeal before the RTC, the respondents, to bolster their claim of better right of possession, alleged that the premises which they occupied are covered by Presidential Decree (*P.D.*) No. 1517 or the *Urban Land Reform Law*. They insist that they are qualified and legitimate beneficiaries of the property. They have been paying rental deposits since August 1, 1984 as proved by a certification dated September 14, 2010.³⁰

In their Comment on the instant petition, respondents reiterate that the MeTC and the RTC have no jurisdiction over herein subject property as there is a pending expropriation case filed by the City Government of

²⁶ *Destreza v. Atty. Riñoza-Plazo, et al.*, 619 Phil. 775, 783 (2009).

²⁷ *Dela Peña, et al. v. Avila, et al.*, 681 Phil. 553, 567 (2012).

²⁸ CA rollo, p. 153.

²⁹ *Nuñez v. SLTEAS Phoenix Solutions, Inc.*, 632 Phil. 143, 155 (2010).

³⁰ CA rollo, pp. 112-122.



Manila before the RTC of Manila, Branch 17, in connection with its distribution to qualified beneficiaries like the respondents.³¹

From the foregoing, this Court rules in favor of the petitioner. We agree with the MeTC, as affirmed by the RTC, that petitioner has proven that he is better entitled to the material possession of the property as against the unsubstantiated claims of respondents.

Respondents admitted in their Answer that they were lessees of Agus, predecessor of petitioner. As such, they recognized the ownership of the lot by the petitioner, which includes the right of possession. As discussed, respondents failed to rebut the deed of sale from which petitioner anchored his claim of ownership and right of possession of the property. Also, they belatedly alleged and presented evidence to substantiate their claim of better right of possession.

Anent respondents' argument that petitioner had no right to evict them on April 19, 2010 since he became the owner only on July 29, 2010, this Court is not persuaded. Although denominated as conditional, a deed of sale is absolute in nature in the absence of any stipulation reserving title to the seller until full payment of the purchase price. In such case, ownership of the thing sold passes to the buyer upon actual or constructive delivery. In a contract of sale, the title to the property passes to the buyer upon the delivery of the thing sold. On the other hand, in a contract to sell, the ownership is, by agreement, retained by the vendor and is not to pass to the vendee until full payment of the purchase price.³²

A perusal of the contract readily reveals that there was nothing in the Deed of Conditional Sale³³ which expressly provides for LNC's retention of title or ownership of the property until full payment of the purchase price or any provision which would impose payment of the price as a condition for the contract's entering into force. The condition imposed was only on the performance of the obligations of the parties. As such, there was already a perfected contract, and the ownership of the property already passed to petitioner as the buyer upon the execution of the deed of conditional sale on January 13, 2010. Thus, petitioner was deemed to have been unlawfully deprived of the lawful possession of the property upon respondents' failure to heed his demand to vacate on April 19, 2010.



³¹ *Rollo*, pp. 242-243.

³² *Norberte, Jr. v. Mejia*, *supra* note 11, at 125.

³³ *Rollo*, pp. 65-68.

Respondents insisted that petitioner has no right to eject them since the subject property is covered by P.D. No. 1517, and that they are qualified beneficiaries under the same.

It is settled in the case of *Spouses Frilles v. Spouses Yambao*³⁴ that the purpose of P.D. No. 1517 is to protect the rights of legitimate tenants who have resided for 10 years or more on specific parcels of land situated in declared Urban Land Reform Zones or Urban Zones, and who have built their homes thereon. These **legitimate tenants have the right not to be dispossessed** and to have the **right of first refusal to purchase the property** under reasonable terms and conditions to be determined by the appropriate government agency. Thus, a legitimate tenant's right of first refusal to purchase the leased property under P.D. No. 1517 depends on whether the disputed property in Metropolitan Manila is situated in an area specifically declared to be **both an Area for Priority Development and Urban Land Reform Zone**.³⁵

These circumstances do not obtain in the present case as it was not alleged nor proven that respondents built their dwelling on the land. They merely presented certification that they were paying rentals since 1984. Assuming the aforementioned circumstances are present, the respondents still cannot qualify under P.D. No. 1517 in the absence of any showing that the subject land had been declared an area for priority development and urban land reform zone. The said documents, letters and memorandum which purportedly establish that the respondents' occupied property is covered by P.D. No. 1517 pertain to the implementation of Ordinance No. 8022 concerning the expropriation of parcels of land, which specifically mentioned *Barangay 536, Zone 53*.³⁶ However, the said documents did not prove that the area of *Barangay 521* where the property (TCT No. 284213) was situated was declared as Area for Priority Development and Urban Land Reform Zone. A copy of the said Ordinance was not even presented. Lastly, P.D. No. 1517 will still not apply as the issue raised in the case at bar was respondents' refusal to vacate the subject property and not their right of first refusal.

As to the issue of the pending expropriation case filed by the City Government of Manila raised for the first time in the RTC by the respondents, the same is proscribed as all issues raised for the first time in the reviewing court are proscribed.³⁷ Assuming *arguendo* that We entertain the issue, We rule that the pending expropriation will not affect the resolution of this petition. *First*, respondents can raise their issue in the

³⁴ 433 Phil. 715, 721-724 (2002). (Citations omitted)

³⁵ *Esteban v. Spouses Marcelo*, 715 Phil. 806, 815 (2013), citing *Sps. Frilles v. Sps. Yambao*, *supra*. (Emphases supplied).

³⁶ CA rollo, pp. 123-126.


³⁷ *Nuñez v. SLTEAS Phoenix Solutions, Inc.*, *supra* note 29.

appropriate legal proceeding. *Second*, respondents' pieces of evidence, which include a certification³⁸ from the Urban Settlement Office, that a pending expropriation case was filed relative to the implementation of Ordinance No. 8022, were silent as to the scope of the said Ordinance, or that the subject property was indeed included therein.


It must be stressed that the ruling in the instant case is limited only to the determination as to who between the parties has a better right to possession. It will not bar any of the parties from filing an action with the proper court to resolve conclusively the issue of ownership.

WHEREFORE, the petition for review on *certiorari* filed by petitioner Thamerlane M. Perez, assailing the Decision dated July 29, 2013 and the Resolution dated March 4, 2014 of the Court of Appeals in CA-G.R. SP No. 124234, is hereby **GRANTED**. The Decision dated April 13, 2011 of the Metropolitan Trial Court in Civil Case No. 187245-CV is hereby **REINSTATED**.

SO ORDERED.



DIOSDADO M. PERALTA
 Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson


JOSE PORTUGAL PEREZ
 Associate Justice

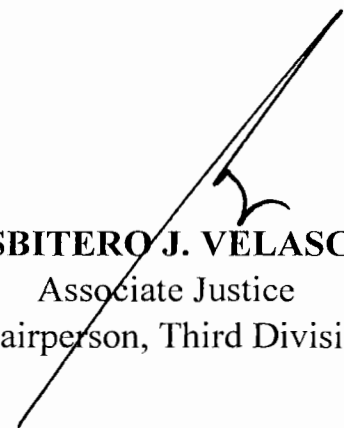

BIENVENIDO L. REYES
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice

³⁸ CA rollo, p. 125.

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.



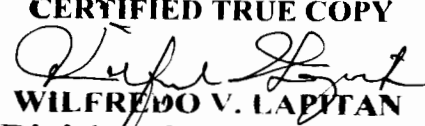
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPID
 Division Clerk of Court
 Third Division
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