



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**CARMENCITA SUAREZ,**  
 Petitioner,

**G.R. No. 187944**

Present:

- versus -

SERENO, C.J.,  
*Chairperson,*  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 VILLARAMA, JR., and  
 REYES, JJ.

**MR. and MRS. FELIX E. EMBOY, JR.**  
**and MARILOU P. EMBOY-**  
**DELANTAR,**

Promulgated:

Respondents.

**MAR 12 2014**

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**DECISION**

**REYES, J.:**

For review in the instant Petition<sup>1</sup> is the Decision<sup>2</sup> rendered on March 19, 2009 and Resolution<sup>3</sup> issued on May 5, 2009 by the Court of Appeals (CA) in CA-G.R. SP No. 03489. The CA granted the Petition for Review<sup>4</sup> filed by Mr. and Mrs. Felix Emboy, Jr. (Felix) and Marilou Emboy-Delantar (Marilou) (respondents), seeking to reverse the decisions of the Regional Trial Court (RTC), Branch 12,<sup>5</sup> and Municipal Trial Court in Cities (MTCC), Branch 3,<sup>6</sup> of Cebu City, rendered on February 26, 2008 in Civil

<sup>1</sup> Rollo, pp. 10-19.

<sup>2</sup> Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Francisco P. Acosta and Rodil V. Zalameda, concurring; id. at 21-28.

<sup>3</sup> Id. at 40.

<sup>4</sup> Id. at 65-95.

<sup>5</sup> With Presiding Judge Estela Alma A. Singco.

<sup>6</sup> With Presiding Judge Gil R. Acosta.

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Case No. CEB-33328,<sup>7</sup> and on September 25, 2006 in Civil Case No. R-49832, respectively. The RTC affirmed the MTCC in upholding the claims of Carmencita Suarez (Carmencita) in her complaint for unlawful detainer instituted against the respondents.

### Antecedents

At the center of the dispute is a 222-square meter parcel of land, designated as Lot No. 1907-A-2 (subject lot) of the subdivision plan Psd-165686, situated in *Barangay Duljo*, Cebu City, and covered by Transfer Certificate of Title (TCT) No. T-174880 issued in the name of Carmencita on February 9, 2005. The subject lot used to be a part of Lot No. 1907-A,<sup>8</sup> which was partitioned in the following manner among the heirs of Spouses Carlos Padilla (Carlos) and Asuncion Pacres (Asuncion):<sup>9</sup>

Lot No.	TCT No.	Heirs
1907-A-1	T-54359	Spouses Rogelio and Praxedes Padilla
1907-A-2	T-54360	Heirs of Vicente Padilla (Vicente), namely: (1) Azucena Padilla, married to Felly Carrera; (2) Remedios Padilla (Remedios), married to Oscar Dimay; (3) Veronica Padilla (Veronica); <sup>10</sup> and (4) Moreno Padilla (Moreno), married to Teresita Curso (Teresita)
1907-A-3	T-54361	Cresencio Padilla
1907-A-4	T-54362	Fructousa Baricuatro
1907-A-5	T-54363	Claudia Padilla-Emboy (Claudia)

A house, which is occupied by respondents Felix and Marilou, stands in the subject lot. The respondents claim that their mother, Claudia, had occupied the subject lot during her lifetime and it was earmarked to become her share in Lot No. 1907-A. They had thereafter stayed in the subject lot for decades after inheriting the same from Claudia, who had in turn succeeded her own parents, Carlos and Asuncion.<sup>11</sup>

In 2004, respondents Felix and Marilou were asked by their cousins, who are the Heirs of Vicente, to vacate the subject lot and to transfer to Lot No. 1907-A-5, a landlocked portion *sans* a right of way. They refused to comply insisting that Claudia's inheritance pertained to Lot No. 1907-A-2.<sup>12</sup>

<sup>7</sup> Entitled "*Carmencita Suarez v. Mr. and Mrs. Felix Emboy, Marilou Emboy-Delantare and Veronica P. Garcia*".

<sup>8</sup> A 957-square meter parcel of land covered by TCT No. T-5922.

<sup>9</sup> *Rollo*, pp. 30-31.

<sup>10</sup> Sometimes referred to in the records as "Veronida".

<sup>11</sup> *Rollo*, p. 22.

<sup>12</sup> *Id.*

Not long after, the respondents received from Carmencita's counsel, Atty. Jufelenito R. Pareja (Atty. Pareja), a demand letter, dated February 23, 2004, requiring them to vacate the subject lot. They were informed that Carmencita had already purchased on February 12, 2004 the subject lot from the former's relatives. However, the respondents did not heed the demand. Instead, they examined the records pertaining to the subject lot and uncovered possible anomalies, *i.e.*, forged signatures and alterations, in the execution of a series of deeds of partition relative to Lot No. 1907-A. On August 13, 2004, they filed before the RTC of Cebu City a complaint<sup>13</sup> for nullification of the partition and for the issuance of new TCTs covering the heirs' respective portions of Lot No. 1907-A.<sup>14</sup>

On December 8, 2004, Carmencita filed before the MTCC and against the respondents a complaint for unlawful detainer, the origin of the instant petition. She alleged that she bought the subject lot from Remedios, Moreno, Veronica and Dionesia,<sup>15</sup> the registered owners thereof and the persons who allowed the respondents to occupy the same by mere tolerance. As their successor-in-interest, she claimed her entitlement to possession of the subject lot and the right to demand from the respondents to vacate the same.<sup>16</sup>

The MTCC upheld Carmencita's claims in its decision rendered on September 25, 2006. The respondents were ordered to vacate the subject lot and remove at their expense all the improvements they had built thereon. They were likewise made solidarily liable to pay Carmencita Php 20,000.00 as attorney's fees.<sup>17</sup>

In the Decision dated February 26, 2008, the RTC affirmed in its entirety the MTCC ruling.<sup>18</sup>

The respondents challenged the MTCC and RTC judgments through a Petition for Review<sup>19</sup> filed before the CA.

The respondents argued that they have been occupying the subject lot in the concept of owners for several decades. Carmencita, on the other hand, was a buyer in bad faith for having purchased the property despite the notice of *lis pendens* clearly annotated on the subject lot's title. Even her complaint for unlawful detainer was filed on December 8, 2004 subsequent

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<sup>13</sup> Docketed as Civil Case No. CEB-30548.

<sup>14</sup> *Rollo*, p. 22.

<sup>15</sup> Vicente's spouse.

<sup>16</sup> *Rollo*, p. 23.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 65-95.

to the respondents' institution on August 13, 2004 of a petition for nullification of the partition. Citing *Sarmiento v. CA*,<sup>20</sup> the respondents emphasized that "even if one is the owner of the property, the possession thereof cannot be wrested from another who had been in the physical or material possession of the same for more than one year by resorting to a summary action of ejectment."<sup>21</sup> The respondents also invoked the doctrine enunciated in *Amagan v. Marayag*<sup>22</sup> that the pendency of another action anchored on the issue of ownership justifies the suspension of an ejectment suit involving the same real property. The foregoing is especially true in the case at bar where the issue of possession is so interwoven with that of ownership. Besides, the resolution of the question of ownership would necessarily result in the disposition of the issue of possession.

The respondents also stressed that the deed of sale dated April 1, 2004, which was attached to the complaint for unlawful detainer, bore tell-tale signs of being spurious. *First*, Atty. Pareja's demand letter sent to the respondents instead referred to a deed of sale dated February 12, 2004. *Secondly*, Teresita, who now lives in Luzon and has been estranged from Moreno since the 1980s, was a signatory in the deed of sale. *Thirdly*, a certain Veronida Padilla, a fictitious person, also signed the deed of sale as among the vendors, but she, too, was impleaded as a co-defendant in the ejectment suit. *Fourthly*, the deed was only registered the following year after its supposed execution.

The respondents insisted that the Heirs of Vicente, who had allegedly sold the subject lot to Carmencita, had never physically occupied the same. Hence, there was no basis at all for Carmencita's claim that the respondents' possession of the subject lot was by mere tolerance of the alleged owners.

The respondents also presented before the CA a newly discovered evidence, which they found in an old wooden chest in their ancestral home. A duly notarized document captioned as an "Agreement,"<sup>23</sup> dated February 23, 1957, showed that Vicente and his spouse, Dionesia, had waived their hereditary rights to Lot No. 1907-A. The document stated that Vicente obtained a loan from the Philippine National Bank using Lot No. 1907-A as a collateral. The loan was paid by Carlos and Asuncion and the waiver must have been executed in order to be fair to Vicente's siblings. Prescinding from the above, the Heirs of Vicente no longer had ownership rights over the subject lot to convey to Carmencita.

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<sup>20</sup> 320 Phil. 146 (1995).

<sup>21</sup> Id. at 156; *rollo*, p. 76.

<sup>22</sup> 383 Phil. 486 (2000).

<sup>23</sup> *Rollo*, p. 121.

The respondents also averred that Carmencita's complaint lacked a cause of action. The certification to file an action was issued by the officials of *Barangay Duljo* in the name of James Tan Suarez, Carmencita's brother, who had no real rights or interests over the subject lot. Further, while Carmencita based her claim over the subject lot by virtue of a deed of sale executed on April 1, 2004, no demand to vacate was made upon the respondents after that date. The absence of such demand rendered the complaint fatally defective, as the date of its service should be the reckoning point of the one-year period within which the suit can be filed.

In support of the respondents' prayer for the issuance of injunctive reliefs, they argued that their loss would be irreparable. Moreover, the resolution of the respondents' petition for nullification of the partition of Lot No. 1907-A, in which Carmencita was likewise impleaded as a defendant, would be rendered useless in the event that the latter's complaint for unlawful detainer would be granted and the former's ancestral house demolished.

### **The Ruling of the CA**

On March 19, 2009, the CA rendered the herein assailed Decision reversing the disquisitions of the courts *a quo* and dismissing Carmencita's complaint for unlawful detainer. The CA explained:

Section 1, Rule 70 of the Rules of Court 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 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.

The distinction between forcible entry and unlawful detainer was lucidly explained in *Sarmiento vs. Court of Appeals*,:

Forcible entry and unlawful detainer cases are two distinct actions defined in Section 1, Rule 70 of the Rules of Court. [In] forcible entry, one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession *de facto*. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess, hence the issue of rightful possession is decisive for, in such action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.

What determines the cause of action is the nature of defendant's entry into the land. If the entry is illegal, then the action which may be filed against the intruder within one (1) year therefrom is forcible entry. If, on the other hand, the entry is legal but the possession thereafter became illegal, the case is one of unlawful detainer which must be filed within one (1) year from the date of the last demand.

A close perusal of [Carmencita's] complaint *a quo* reveals that the action was neither one of forcible entry nor unlawful detainer but essentially involved an issue of ownership which must be resolved in an *accion reivindicatoria*. It did not characterize [the respondents'] alleged entry into the land: whether the same was legal or illegal. It did not state how [the respondents] entered the land and constructed a house thereon. It was also silent on whether [the respondents'] possession became legal before [Carmencita] demanded from them to vacate the land. The complaint merely averred that their relatives previously owned the lot [the respondents] were occupying and that after [Carmencita] purchased it[,] she, as its new owner, demanded [for the respondents] to vacate the land. Moreover, it is undisputed that [the respondents] and their ancestors have been occupying the land for several decades already. There was no averment as to how or when [Carmencita's] predecessors tolerated [the respondents'] possession of the land. Consequently, there was no contract to speak of, whether express or implied, between [the respondents], on one hand, and [Carmencita] or her predecessors, on the other, as would qualify [the respondents'] possession of the land as a case of unlawful detainer. Neither was it alleged that [the respondents] took possession of the land through force, intimidation, threat, strategy or stealth to make out a case of forcible entry. In any event, [Carmencita] cannot legally assert that [the respondents'] possession of the land was by mere tolerance. This is because [Carmencita's] predecessors-in-interest did not yet own the property when [Claudia] took possession thereof. Take note that [Carmencita's] predecessors-in-interest merely stepped into the shoes of their parents who were also co-heirs of [Claudia]. Finally, to categorize a cause of action as one constitutive of unlawful detainer, plaintiff's supposed acts of tolerance must have been present from the start of the possession which he later seek[s] to recover. This is clearly wanting in the case at bar.

Indeed, when the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, as in the case at bar, the remedy should either be an *accion publiciana* or an *accion reivindicatoria* in the proper RTC. If [Carmencita] is truly the owner of the subject property and she was unlawfully deprived of the real right of possession or ownership thereof, she should present her claim before the RTC in an *accion publiciana* or an *accion reivindicatoria*, and not before the municipal trial court in a summary proceeding of unlawful detainer or forcible entry.

*Munoz vs. Court of Appeals* enunciated:

For even if he is the owner, possession of the property cannot be wrested from another who had been in possession thereof for more than twelve (12) years through a summary action for ejectment. Although admittedly[,] petitioner may validly claim ownership based on the muniments of title it presented, such evidence does not responsibly address the issue of prior actual possession raised in a forcible entry case. It must be stated that regardless of actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by a strong hand, violence or terror. Thus, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his prior possession, if he has in his favor priority in time, he has the security that entitles him to remain on the property until he is lawfully ejected by a person having a better right by *accion publiciana* or *accion reivindicatoria*.<sup>24</sup> (Citations omitted and underscoring supplied)

In Carmencita's Motion for Reconsideration<sup>25</sup> filed before the CA, she alleged that the case of *Sarmiento* cited by the respondents is not applicable to the present controversy since it involves a boundary dispute, which is properly the subject of an *accion reivindicatoria* and over which the MTCC has no jurisdiction. She claimed that *Rivera v. Rivera*<sup>26</sup> finds more relevance in the case at bar. In *Rivera*, the contending parties were each other's relatives and the Court ruled that in an unlawful detainer case, prior physical possession by the complainant is not necessary.<sup>27</sup> Instead, what is required is a better right of possession. Further, the MTCC cannot be divested of jurisdiction just because the defendants assert ownership over the disputed property.

In the herein assailed Resolution dated May 5, 2009, the CA denied Carmencita's Motion for Reconsideration.

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<sup>24</sup> Id. at 24-27.

<sup>25</sup> Id. at 29-38.

<sup>26</sup> 453 Phil. 404 (2003).

<sup>27</sup> Id. at 410.

**In essence, the instant petition presents the following issues:**

I

Whether or not Carmencita's complaint against the respondents had sufficiently alleged and proven a cause of action for unlawful detainer.

II

Whether or not the pendency of the respondents' petition for nullification of partition of Lot No. 1907-A and for the issuance of new certificates of title can abate Carmencita's ejectment suit.

**Carmencita's Allegations**

In support of the petition, Carmencita reiterates that she purchased the subject lot from the Heirs of Vicente, who were then the registered owners thereof. At the time of the sale, respondents Felix and Marilou were occupying the subject lot. Thus, Atty. Pareja, in Carmencita's behalf, demanded that they vacate the property. The respondents' refusal to comply with the demand turned them into deforciantes unlawfully withholding the possession of the subject lot from Carmencita, the new owner, whose recourse was to file a complaint for unlawful detainer.

Further, Carmencita insists that a certificate of title shall not be subject to a collateral attack<sup>28</sup> and the issue of ownership cannot be resolved in an action for unlawful detainer. A pending suit involving the question of ownership of a piece of real property will not abate an ejectment complaint as the two are not based on the same cause of action and are seeking different reliefs.<sup>29</sup>

Additionally, Carmencita invokes the doctrine in *Eastern Shipping Lines, Inc. v. CA*<sup>30</sup> that the registered owner of a property is entitled to its possession. In *Arcal v. CA*,<sup>31</sup> the Court also explained that the occupation of a property not by its registered owner but by others depends on the former's tolerance, and the occupants are bound by an implied promise to vacate upon demand, failing at which, a suit for ejectment would be proper.<sup>32</sup>

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<sup>28</sup> Citing Section 48 of Presidential Decree No. 1529 or The Property Registration Decree.

<sup>29</sup> Citing *Punio v. Judge Go*, 357 Phil. 1, 6 (1998), and *Silverio v. CA*, 454 Phil. 750, 758 (2003).

<sup>30</sup> 424 Phil. 544 (2002).

<sup>31</sup> 348 Phil. 813 (1998).

<sup>32</sup> *Id.* at 825; *rollo*, p. 140.

### The Respondents' Arguments

In their Comment<sup>33</sup> to the instant petition, the respondents stress that Carmencita's complaint for unlawful detainer was fundamentally inadequate. There was practically no specific averment as to when and how possession by tolerance of the respondents began. In the complaint, Carmencita made a general claim that the respondents possessed "the property by mere tolerance 'with the understanding that they would voluntarily vacate the premises and remove their house(s) thereon upon demand by the owners'."<sup>34</sup> In *Spouses Valdez, Jr. v. CA*,<sup>35</sup> the Court ruled that the failure of the complainants to allege key jurisdictional facts constitutive of unlawful detainer is fatal and deprives the MTCC of jurisdiction over the action.

In their rejoinder,<sup>36</sup> the respondents likewise argue that the issues of possession and ownership are inseparably linked in the case at bar. Carmencita's complaint for ejectment was based solely on her spurious title, which is already the subject of the respondents' petition for nullification of partition of Lot No. 1907-A.

### Our Disquisition

The instant petition lacks merit.

**Carmencita had not amply alleged and proven that all the requisites for unlawful detainer are present in the case at bar.**

"Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper."<sup>37</sup>

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<sup>33</sup> *Rollo*, pp. 55-64.

<sup>34</sup> *Id.* at 59.

<sup>35</sup> 523 Phil. 39 (2006).

<sup>36</sup> *Rollo*, pp. 144-151.

<sup>37</sup> *Corpuz v. Agustin*, G.R. No. 183822, January 18, 2012, 663 SCRA 350, 361, citing *Carbonilla v. Abiera*, G.R. No. 177637, July 26, 2010, 625 SCRA 461.

In *Spouses Valdez, Jr.*,<sup>38</sup> the Court is instructive anent the three kinds of actions available to recover possession of real property, *viz*:

(a) *accion interdictal*; (b) *accion publiciana*; and (c) *accion reivindicatoria*.

*Accion interdictal* comprises two distinct causes of action, namely, forcible entry (*detentacion*) and unlawful detainer (*desahuico*) [sic]. In forcible entry, one is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The two are distinguished from each other in that in forcible entry, the possession of the defendant is illegal from the beginning, and that the issue is which party has prior *de facto* possession while in unlawful detainer, possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess.

The jurisdiction of these two actions, which are summary in nature, lies in the proper municipal trial court or metropolitan trial court. Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer. The issue in said cases is the right to physical possession.

*Accion publiciana* is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of the forcible entry or illegal detainer, but *an accion publiciana*. On the other hand, *accion reivindicatoria* is an action to recover ownership also brought in the proper regional trial court in an ordinary civil proceeding.<sup>39</sup> (Citations omitted)

In a complaint for unlawful detainer, the following key jurisdictional facts must be alleged and sufficiently established:

- (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
- (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
- (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

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<sup>38</sup> Supra note 35.

<sup>39</sup> Id. at 45-46.

- (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.<sup>40</sup>

In the case at bar, the first requisite mentioned above is markedly absent. Carmencita failed to clearly allege and prove how and when the respondents entered the subject lot and constructed a house upon it.<sup>41</sup> Carmencita was likewise conspicuously silent about the details on who specifically permitted the respondents to occupy the lot, and how and when such tolerance came about.<sup>42</sup> Instead, Carmencita cavalierly formulated a legal conclusion, *sans* factual substantiation, that (a) the respondents' initial occupation of the subject lot was lawful by virtue of tolerance by the registered owners, and (b) the respondents became deforciantes unlawfully withholding the subject lot's possession after Carmencita, as purchaser and new registered owner, had demanded for the former to vacate the property.<sup>43</sup> It is worth noting that the absence of the first requisite assumes even more importance in the light of the respondents' claim that for decades, they have been occupying the subject lot as owners thereof.

Again, this Court stresses that to give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint must sufficiently show such a statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, without resort to parol testimony, as these proceedings are summary in nature. In short, the jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, the remedy should either be an *accion publiciana* or *accion reivindicatoria*.<sup>44</sup>

**As an exception to the general rule, the respondents' petition for nullification of the partition of Lot No. 1907-A can abate Carmencita's suit for unlawful detainer.**

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<sup>40</sup> Supra note 37, at 363; see also *Delos Reyes v. Odonez*, G.R. No. 178096, March 23, 2011, 646 SCRA 328, 334-335.

<sup>41</sup> *Rollo*, pp. 25-26.

<sup>42</sup> *Id.*

<sup>43</sup> Please see *Petition*, *id.* at 12-13; *Reply*, *id.* at 138-139.

<sup>44</sup> *Jose v. Alfuerto*, G.R. No. 169380, November 26, 2012, 686 SCRA 323, 341, citing *Serdoncillo v. Spouses Benolirao*, 358 Phil. 83, 95 (1998).

In *Amagan*, the Court is emphatic that:

As a general rule, therefore, a pending civil action involving ownership of the same property does not justify the suspension of ejectment proceedings. “The underlying reasons for the above ruling were that the actions in the Regional Trial Court did not involve physical or *de facto* possession, and, on not a few occasions, that the case in the Regional Trial Court was merely a ploy to delay disposition of the ejectment proceeding, or that the issues presented in the former could quite as easily be set up as defenses in the ejectment action and there resolved.”

Only in rare instances is suspension allowed to await the outcome of the pending civil action. One such exception is *Vda. de Legaspi v. Avendaño*, wherein the Court declared:

“x x x. Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. It is only where there has been forcible entry that as a matter of public policy the right to physical possession should be immediately set at rest in favor of the prior possession regardless of the fact that the other party might ultimately be found to have superior claim to the premises involved, thereby to discourage any attempt to recover possession thru force, strategy or stealth and without resorting to the courts.”

x x x x

Indisputably, the execution of the MCTC Decision would have resulted in the demolition of the house subject of the ejectment suit; thus, by parity of reasoning, considerations of equity require the suspension of the ejectment proceedings. We note that, like *Vda. de Legaspi*, the respondent’s suit is one of unlawful detainer and not of forcible entry. And most certainly, the ejectment of petitioners would mean a demolition of their house, a matter that is likely to create the “confusion, disturbance, inconveniences and expenses” mentioned in the said exceptional case.

Necessarily, the affirmance of the MCTC Decision would cause the respondent to go through the whole gamut of enforcing it by physically removing the petitioners from the premises they claim to have been occupying since 1937. (Respondent is claiming ownership only of the land, not of the house.) Needlessly, the litigants as well as the courts will be wasting much time and effort by proceeding at a stage wherein the outcome is at best temporary, but the result of enforcement is permanent, unjust and probably irreparable.

We should stress that respondent's claim to physical possession is based not on an expired or a violated contract of lease, but allegedly on "mere tolerance." Without in any way prejudging the proceedings for the quieting of title, we deem it judicious under the present exceptional circumstances to suspend the ejectment case.<sup>45</sup> (Citations omitted)

The Court then quoted with favor the following portion of the Decision dated July 8, 1997, penned by Associate Justice Artemio G. Tuquero in CA-G.R. No. 43611-SP, from which the *Amagan* case sprang:

"*ONE.* Private respondent Teodorico T. Marayag anchors his action for unlawful detainer on the theory that petitioners' possession of the property in question was by mere tolerance. However, in answer to his demand letter dated April 13, 1996 x x x, petitioners categorically denied having any agreement with him, verbal or written, asserting that they are 'owners of the premises we are occupying at 108 J.P. Rizal Street, San Vicente, Silang, Cavite.' In other words, it is not merely physical possession but ownership as well that is involved in this case.["]

"*TWO.* In fact, to protect their rights to the premises in question, petitioners filed an action for reconveyance, quieting of title and damages against private respondents, docketed as Civil Case No. TG-1682 of the Regional Trial Court, Branch 18, Tagaytay City. *The issue of ownership is squarely raised in this action. Undoubtedly, the resolution of this issue will be determinative of who is entitled to the possession of the premises in question.*["]

"*THREE.* *The immediate execution of the judgment in the unlawful detainer case will include the removal of the petitioners' house [from] the lot in question.*["]

"*To the mind of the Court it is injudicious, nay inequitable, to allow demolition of petitioners' house prior to the determination of the question of ownership [of] the lot on which it stands.*"<sup>46</sup> (Citation omitted)

We find the doctrines enunciated in *Amagan* squarely applicable to the instant petition for reasons discussed hereunder.

Carmencita's complaint for unlawful detainer is anchored upon the proposition that the respondents have been in possession of the subject lot by mere tolerance of the owners. The respondents, on the other hand, raise the defense of ownership of the subject lot and point to the pendency of Civil Case No. CEB-30548, a petition for nullification of the partition of Lot No. 1907-A, in which Carmencita and the Heirs of Vicente were impleaded as parties. Further, should Carmencita's complaint be granted, the respondents' house, which has been standing in the subject lot for

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<sup>45</sup> Supra note 22, at 495-499.

<sup>46</sup> Id. at 498-499.

decades, would be subject to demolition. The foregoing circumstances, thus, justify the exclusion of the instant petition from the purview of the general rule.

All told, we find no reversible error committed by the CA in dismissing Carmencita's complaint for unlawful detainer. As discussed above, the jurisdictional requirement of possession by mere tolerance of the owners had not been amply alleged and proven. Moreover, circumstances exist which justify the abatement of the ejectment proceedings. Carmencita can ventilate her ownership claims in an action more suited for the purpose. The respondents, on other hand, need not be exposed to the risk of having their house demolished pending the resolution of their petition for nullification of the partition of Lot No. 1907-A, where ownership over the subject lot is likewise presented as an issue.

**IN VIEW OF THE FOREGOING**, the instant petition is **DENIED**. The Decision rendered on March 19, 2009 and Resolution issued on May 5, 2009 by the Court of Appeals in CA-G.R. SP No. 03489 are **AFFIRMED**.

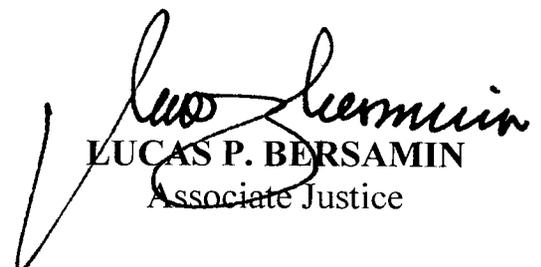
**SO ORDERED.**

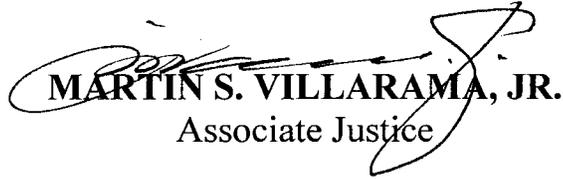
  
**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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