



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**SPOUSES AURORA TOJONG  
 SU and AMADOR SU,**

Petitioners,

**G.R. No. 238892**

Present:

- versus -

**EDA BONTILAO, PABLITA  
 BONTILAO, and MARICEL  
 DAYANDAYAN,**

Respondents.

**BERSAMIN, C.J.,** Chairperson,  
**PERLAS-BERNABE,**  
**JARDELEZA,**  
**GESMUNDO,** and  
**CARANDANG, JJ.**

Promulgated:

**SEP 04 2019**

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated December 14, 2017 and the Resolution<sup>3</sup> dated March 23, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 10906 which reversed and set aside the Decision<sup>4</sup> dated December 2, 2016 and the Order<sup>5</sup> dated April 26, 2017 of the Regional Trial Court of Lapu-Lapu City, Branch 54 (RTC) in Civil Case No. M-LLP-12-01304-CV-RTC-54 and dismissed the present complaint for unlawful detainer.

<sup>1</sup> Rollo, pp. 7-25.

<sup>2</sup> Id. at 37-51. Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Geraldine C. Fiel-Macaraig and Louis P. Acosta, concurring.

<sup>3</sup> Id. at 52-59.

<sup>4</sup> Id. at 225-229. Penned by Presiding Judge Victor Teves, Sr.

<sup>5</sup> Id. at 242-246.

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### The Facts

The subject matter of the present controversy is a parcel of land located at Barrio Looc, Lapu-Lapu City with an area of 2,830 square meters, more or less, designated as Lot No. 1036 covered by Transfer Certificate of Title (TCT) No. 29490<sup>6</sup> of the Registry of Deeds of Lapu-Lapu City, registered in the name of petitioner Aurora Tojong Su (Aurora), married to petitioner Amador P. Su (Amador; collectively, petitioners).

On March 1, 2012, petitioners filed a complaint<sup>7</sup> for unlawful detainer, damages, and attorney's fees against respondents Eda Bontilao<sup>8</sup> (Eda), Pablita Bontilao<sup>9</sup> (Pablita), and Maricel Dayandayan (Maricel; collectively, respondents) as well as several others<sup>10</sup> before the Municipal Trial Court in Cities, Lapu-Lapu City (MTCC), alleging that respondents had constructed their houses on the subject property and had been occupying the same by petitioners' mere tolerance, with the understanding that they will peacefully vacate the premises upon proper demand.<sup>11</sup>

Unfortunately, when petitioners informed respondents of their need of the subject property and requested them to voluntarily vacate the same, respondents refused.<sup>12</sup> Petitioners' formal demand<sup>13</sup> for them to do so likewise went unheeded. Thus, after efforts for an amicable settlement before the barangay similarly failed,<sup>14</sup> petitioners instituted the present complaint for unlawful detainer.

In defense,<sup>15</sup> respondents claimed that petitioners had no cause of action against them, not being the real owners of the subject property. They averred that petitioners obtained their title through fraud, having bought the subject property from one Gerardo Dungog (Gerardo) despite full knowledge that it was their predecessor, Mariano Ybañez (Mariano), who owned the same as evidenced by a tax declaration issued under his name. As the legitimate heirs of Mariano, respondents claimed to be the true owners of the subject property who were in continuous possession thereof since their youth. Consequently, they could not have been occupying the subject property by the mere tolerance of petitioners.<sup>16</sup>

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<sup>6</sup> Id. at 28-29.

<sup>7</sup> Id. at 60-63.

<sup>8</sup> Also referred to as "Nida Bontilao" and "Ida Bontilao" in the records. See Order dated March 3, 2014, id. at 120.

<sup>9</sup> Also referred to as "Pablito Bontilla" in the records. See id. at 120.

<sup>10</sup> Also impleaded as defendants were Noel Lutero, Ceasar Berdon, Joejet L. Concon, Pastor Berdon, Bonifacio Ong, Sr., Bonifacio Ong, Jr., Teddy Villa, Sally Elizar Villa, and Jonathan Ong. Records show that the case was terminated as to them, except Noel Lutero and Ceasar Berdon, upon the rendition of a Judgment based on two separate Compromise Agreements; see Order dated June 14, 2013, id. at 88.

<sup>11</sup> Id. at 60-61.

<sup>12</sup> Id. at 61.

<sup>13</sup> Id. at 67-78.

<sup>14</sup> See Certification to File Action dated September 2, 2008; id. at 66.

<sup>15</sup> See Answer with Counterclaim dated November 29, 2012; id. at 79-85.

<sup>16</sup> Id.

The case was set for preliminary conference on June 14, 2013. However, despite due notice, petitioners and their counsel failed to appear. Only respondents and their counsel, Atty. Vicente Roco (Atty. Roco) were present.<sup>17</sup>

### **The Proceedings Before The MTCC and Its Ruling**

In an Order<sup>18</sup> dated June 14, 2013, the MTCC dismissed the case insofar as respondents were concerned<sup>19</sup> for failure of petitioners and their counsel to appear at the preliminary conference despite due notice.

Petitioners' counsel, Atty. John Paul P. Amores (Atty. Amores), filed a motion for reconsideration<sup>20</sup> against the order of dismissal, explaining that his wife and three-year-old son fell ill in the morning of June 14, 2013, leaving him with no choice but to attend to them. He clarified that he exerted efforts to contact the court through telephone and apprise them of his absence, but failed.<sup>21</sup>

After hearing Atty. Amores's motion for reconsideration and finding his explanations to be well-taken, the MTCC issued an Order<sup>22</sup> dated June 28, 2013 granting the same and resetting the preliminary conference anew on August 9, 2013. Thereafter, Atty. Amores withdrew<sup>23</sup> as counsel for petitioners and Atty. Roberto R. Palmares (Atty. Palmares) entered his appearance<sup>24</sup> in the case. With the termination of the preliminary conference, the parties were required to submit their position papers within ten (10) days from receipt, after which or the lapse of the said period, the case was deemed submitted for decision in an Order dated October 4, 2013.<sup>25</sup>

Subsequently, respondents filed an Omnibus Motion,<sup>26</sup> praying that the June 14, 2013 Order dismissing the case for non-appearance of petitioners and their counsel at the preliminary conference be reinstated and declared final and executory, and that the subsequent Orders dated June 28, 2013 and October 4, 2013 be recalled for lack of factual and legal basis. Respondents insisted that petitioners and their former counsel, Atty. Amores, failed to offer any justifiable reason for their absence at the preliminary conference, and under the rules, such inexcusable absence is a ground for the dismissal of the case. As such, the MTCC correctly ordered

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<sup>17</sup> Id. at 39.

<sup>18</sup> Id. at 88. Penned by Presiding Judge Allan Francisco S. Garciano.

<sup>19</sup> The rest of the defendants entered into separate compromise agreements with petitioners, which the MTCC ordered submitted for judgment in the same Order.

<sup>20</sup> *Rollo*, pp. 89-91.

<sup>21</sup> Id. at 89-90.

<sup>22</sup> Id. at 92.

<sup>23</sup> Id. at 93-94.

<sup>24</sup> Id. at 95-96.

<sup>25</sup> Id. at 97.

<sup>26</sup> Id. at 98-106.

its dismissal on June 14, 2013. Further, respondents pointed out that the motion for reconsideration filed by Atty. Amores was a prohibited pleading under the Rules on Summary Procedure. Finally, they contended that petitioners failed to file their pre-trial brief.

In an Order<sup>27</sup> dated September 21, 2015, the MTCC denied respondents' Omnibus Motion, ratiocinating that a motion for reconsideration is a prohibited pleading only if it seeks reconsideration of a judgment rendered *on the merits*. In this case, since the order of dismissal issued by the MTCC was grounded on the failure of petitioners and their counsel to appear during the preliminary conference – hence, a procedural ground – the motion for reconsideration filed by Atty. Amores was not a prohibited pleading.

Similarly, the MTCC rejected respondents' assertion that petitioners' failure to file a pre-trial brief is a cause for the dismissal of the action, explaining that the unlawful detainer case can be decided on the basis of the pleadings, documentary evidence, and position papers of the parties as it is covered by the Rules on Summary Procedure. Stressing that pre-trial briefs may be submitted only suppletorily and not mandatorily, the MTCC pointed out that in the Notice of Preliminary Conference,<sup>28</sup> what was required was merely the appearance of the parties. Finally, it emphasized that the merits of the case justify the relaxation of strict rules of procedure, positing that the ends of justice are better served if the parties will be given full opportunity to address the issues raised.<sup>29</sup>

After due proceedings, the MTCC rendered a Decision<sup>30</sup> dated October 6, 2015 finding in favor of petitioners and against respondents. Accordingly, it ordered respondents and all persons claiming rights under them to immediately vacate the subject property, to surrender the peaceful possession thereof to petitioners, and to jointly and severally pay them the amount of ₱10,000.00 as attorney's fees.<sup>31</sup>

In so ruling, the MTCC found that being the registered owners of the subject property covered by TCT No. 29490, petitioners have the right of possession over the same, being one of the attributes of ownership. Moreover, the actual possession and occupation of respondents was by mere tolerance of petitioners, hence, respondents were bound to peacefully vacate upon demand. The MTCC noted that respondents failed to present any countervailing evidence to support their claim of ownership or, at the least, possession of the subject property. Their allegation that they are the legitimate heirs of Mariano, who they averred was the original owner of the

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<sup>27</sup> Id. at 136-144-B.

<sup>28</sup> Id. at 86-87.

<sup>29</sup> Id. at 140-144.

<sup>30</sup> Id. at 145-157.

<sup>31</sup> Id. at i57.

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subject property, cannot be given credence as the same would amount to a collateral attack on the title of petitioners.<sup>32</sup>

Dissatisfied, respondents appealed to the RTC.

### **The RTC Ruling**

In a Decision<sup>33</sup> dated December 2, 2016, the RTC affirmed the MTCC Decision *in toto*, reiterating its ruling that a motion for reconsideration is a prohibited pleading only if it seeks reconsideration of a judgment rendered on the merits. Since the order of dismissal issued by the RTC was based on a technicality, the motion for reconsideration filed by petitioners' counsel was therefore not prohibited. Moreover, it sustained the MTCC's ruling that pre-trial briefs may be submitted suppletorily but not mandatorily.<sup>34</sup>

On the substantive issue, the RTC affirmed the MTCC's finding that respondents' occupation of the subject property was by mere tolerance of petitioners, who were the registered owners thereof and therefore, entitled to its possession as an attribute of ownership upon demand. As regards the issues of lack of jurisdiction, laches and prescription, the RTC held that respondents never raised the same in their answer or in the proceedings before the MTCC; thus, they are now barred from raising the same.<sup>35</sup>

Respondents filed a motion for reconsideration<sup>36</sup> while petitioners moved for the issuance of a writ of execution. In an Order<sup>37</sup> dated April 26, 2017, the RTC denied respondents' motion. On the other hand, it granted petitioners' motion for the issuance of a writ of execution without prejudice, however, to a further appeal that may be taken by respondents. Accordingly, respondents filed an appeal before the CA.

In their petition for review,<sup>38</sup> respondents prayed for the outright dismissal of the complaint on account of the non-appearance of petitioners and their counsel during the first scheduled preliminary conference, their failure to file a pre-trial brief, and the lack of a satisfactory explanation therefor. On the substantive aspect, they maintained that they are the legitimate heirs of Mariano, the original owner of the subject property, and therefore occupy the same as the true owners. They averred that petitioners failed to describe in detail the alleged acts of tolerance with respect to their possession thereof. Finally, they insisted that an ejectment case is not always

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<sup>32</sup> Id. at 151-156.

<sup>33</sup> Id. at 225-229.

<sup>34</sup> Id. at 150-157.

<sup>35</sup> Id.

<sup>36</sup> Id. at 230-241.

<sup>37</sup> Id. at 242-246.

<sup>38</sup> CA *rollo*, pp. 3-32.

necessarily decided in favor of the party who has a certificate of title, as the issue involved is only physical possession.<sup>39</sup>

### The CA Ruling

In a Decision<sup>40</sup> dated December 14, 2017, the CA reversed and set aside the RTC issuances and instead, dismissed the complaint altogether. The CA held that it was grossly erroneous for the RTC to affirm the MTCC's recall of its June 14, 2013 Order dismissing the case for failure of petitioners and their former counsel to appear during the first scheduled preliminary conference.<sup>41</sup>

The CA took exception to the MTCC's liberality premised on the principle that courts have the prerogative to relax compliance with procedural rules. It reasoned that even if Atty. Amores's justification for his failure to appear at the preliminary conference was acceptable to the courts *a quo*, it did not excuse the absence of petitioners themselves, as Atty. Amores's reasons were personal and exclusively pertained to him.<sup>42</sup>

Furthermore, the CA stressed that the summary nature of the proceedings in ejectment cases expressly prohibits dilatory motions for postponements without justifiable cause and makes the appearance of the parties and their counsel during the preliminary conference mandatory. It declared that concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least promptly explain his failure to comply with the rules, none of which was forthcoming in this case. The MTCC even failed to inquire into the reason for petitioners' absence during the preliminary conference. The CA even opined that it was reasonable to presume that petitioners were well aware of the scheduled date of preliminary conference, as Atty. Amores was served with notice thereof. Therefore, having been charged with notice of the preliminary conference and for their failure to heed the same, the MTCC's order of dismissal must be affirmed.<sup>43</sup>

Aggrieved, petitioners moved for reconsideration, averring that they had authorized Atty. Amores to represent them in the preliminary conference on June 14, 2013, as evidenced by a Special Power of Attorney<sup>44</sup> (SPA) dated November 28, 2012 duly offered and attached<sup>45</sup> to the records of the MTCC. They pleaded that the circumstances in this case do not illustrate a pattern or scheme to delay the disposition of the case or a wanton disregard

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<sup>39</sup> Id. at 12-30.

<sup>40</sup> *Rollo*, pp. 37-51.

<sup>41</sup> Id. at 50-51.

<sup>42</sup> Id. at 47-49.

<sup>43</sup> Id. at 49-50.

<sup>44</sup> Id. at 342.

<sup>45</sup> Id. at 343.

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of the rules, as in fact their new counsel, Atty. Palmares, also armed with a written authority, appeared on their behalf on the rescheduled preliminary conference on October 4, 2013. Likewise, Atty. Amores promptly moved for the reconsideration of the order of dismissal and they filed their position paper when required by the MTCC. As regards their failure to file a pre-trial brief, they asserted that the MTCC only required the appearance of the parties, not the filing of a pre-trial brief, in the Notice of Preliminary Conference.<sup>46</sup>

In a Resolution<sup>47</sup> dated March 23, 2018, the CA denied petitioners' motion for reconsideration; hence, this petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA erred in reversing and setting aside the courts *a quo*'s issuances recalling the June 14, 2013 Order and in dismissing the complaint for unlawful detainer based on purely procedural considerations.

### **The Court's Ruling**

The petition is partly meritorious.

#### **I.**

Section 7 of the Revised Rules on Summary Procedure states:

Section 7. *Preliminary conference; appearance of parties.* – Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

**The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint.** The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6 hereof. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. This Rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference. (Emphasis supplied)

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<sup>46</sup> CA rollo, pp. 309-331.

<sup>47</sup> Rollo, pp. 52-59.

Relative thereto, Section 4, Rule 18 of the Revised Rules of Court, which apply suppletorily insofar as not inconsistent with the Rules on Summary Procedure, states:

Section 4. *Appearance of parties.* – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. (Emphasis and underlining supplied)

In this case, petitioners executed an SPA<sup>48</sup> dated November 28, 2012 in favor of their former counsel, Atty. Amores, expressly granting him full authority to represent them during the preliminary conference as well as to enter into a compromise agreement or submit to alternative modes of dispute resolution, *inter alia*. The SPA has been offered before the MTCC and attached to the records of the case as page 43,<sup>49</sup> thereby negating any suggestions of a belated execution in order to excuse petitioners' absence during the first scheduled preliminary conference. In accordance with the provisions of Section 4, Rule 18 of the Revised Rules of Court as above-quoted, the Court finds the SPA to be sufficient written authorization in favor of petitioners' counsel that excused the non-appearance of petitioners at the preliminary conference. In fact, it would appear that the existence of said SPA was the reason why Atty. Amores did not bother to explain the non-appearance of petitioners and why the MTCC no longer found it necessary to inquire into the same.

On the other hand, Atty. Amores, in his motion for reconsideration, had distinctly explained the reason for his absence thereat, which the MTCC deemed well-taken. Indeed, what constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge. Unless and until a clear and manifest abuse of discretion is committed by the judge, his appreciation of a party's reasons for his non-appearance will not be disturbed.<sup>50</sup>

On this note, the motion for reconsideration filed by Atty. Amores is not a prohibited motion, contrary to respondents' refutations. True, Section 19 (c)<sup>51</sup> of the Rules on Summary Procedure and Section 13 (3)<sup>52</sup> of Rule 70

<sup>48</sup> Id. at 342.

<sup>49</sup> See Certification dated January 17, 2018 issued by Atty. Dennis L. Pacas, Branch Clerk of Court; id. at 343.

<sup>50</sup> *Daaco v. Yu*, 761 Phil. 161, 168 (2015).

<sup>51</sup> Section 19. *Prohibited pleadings and motions.* – The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

x x x x

(c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;

x x x x

<sup>52</sup> Section 13. *Prohibited pleadings and motions.* – The following petitions, motions, or pleadings shall not be allowed:

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of the Revised Rules of Court consider a motion for reconsideration a prohibited pleading. However, the motion for reconsideration contemplated thereunder is one seeking reconsideration of a judgment rendered on the merits,<sup>53</sup> not from an order of dismissal on the ground of non-appearance at the preliminary conference, as in this case. The MTCC's June 14, 2013 Order dismissing petitioners' case was not an adjudication on the merits; as such, reconsideration thereof was correctly sought by Atty. Amores, which was not a *pro forma* motion and therefore, tolled the running of the prescriptive period to make an appeal.

Finally, while it is true that failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial,<sup>54</sup> and therefore, shall be a cause for dismissal of the action save for justifiable reasons or the existence of a written authority in favor of a party's representative, it is likewise true that cases governed by the Rules on Summary Procedure may be resolved on the basis of the pleadings, affidavits of witnesses, and position papers filed by the parties. Further, as aptly pointed out by the MTCC, its Notice of Preliminary Conference<sup>55</sup> did not require the filing of the parties' pre-trial briefs; all that was required was their appearance thereat. As such, petitioners cannot be faulted in this regard.

At this point, it bears mentioning that petitioners, after Atty. Amores's failure to appear at the first scheduled preliminary conference, causing the dismissal of the case, promptly sought the services of another lawyer, Atty. Palmares, to represent them in subsequent proceedings. For his part, Atty. Amores filed a motion for reconsideration explaining the reasons for his non-appearance. These actions, taken together, show that petitioners had no intention of deliberately delaying or postponing the preliminary conference or trifling with the summary nature of ejectment proceedings; instead, it evinces their legitimate desire to comply with court processes. The lack of efforts to manifest to the court the reason for their absence at the preliminary conference is more apparent than real: the existence of the SPA in the records of the case more than sufficiently explains their non-appearance thereat. Thus, the Court finds no reason for the CA to set aside the courts *a quo*'s order recalling its dismissal of the case and allowing it to proceed on its course and resolving the same on the merits.

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x x x x

3. Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;

x x x x

<sup>53</sup> *Lucas v. Fabros*, 381 Phil. 1, 6 (2000); *Joven v. CA*, 287 Phil. 777, 787 (1992). See also *Spouses Edillo v. Spouses Dulpina*, 624 Phil. 587, 599-600 (2010).

<sup>54</sup> Section 6. *Pre-trial brief*. – The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

x x x x

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

<sup>55</sup> *Rollo*, p. 86.

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Verily, the CA erred in completely dismissing petitioners' petition before it on purely procedural grounds. Indeed, "[i]t is well to remember that this Court, in not a few cases, has consistently held that cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes and defense, rather than on technicality or some procedural imperfections. In so doing, the ends of justice would be better served. The dismissal of cases purely on technical grounds is frowned upon and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very ends. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided."<sup>56</sup>

In this instance, court procedure dictates that the present case be remanded to the CA for resolution on the merits. However, when there is already enough basis on which a proper evaluation of the merits may be had, the Court may dispense with the time-consuming procedure of remand in order to prevent further delay in the disposition of the case and to better serve the ends of justice.<sup>57</sup> In view of the foregoing and in light of petitioners' prayer<sup>58</sup> that the decisions rendered by the courts *a quo* in their favor be reinstated, the Court finds it appropriate to proceed with the resolution of the substantive issues of this case.

## II.

Unlawful detainer involves the defendant's withholding of the possession of the property to which the plaintiff is entitled, after the expiration or termination of the former's right to hold possession under the contract, whether express or implied. 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.<sup>59</sup>

In an action for unlawful detainer based on tolerance, the acts of tolerance must be proved; bare allegations are insufficient. For tolerance to exist, the complainants in an unlawful detainer must prove that they had consented to the possession over the property through positive acts. After all, tolerance signifies permission and not merely silence or inaction as silence

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<sup>56</sup> *Malixi v. Baltazar*, G.R. No. 208224, November 22, 2017, 846 SCRA 244, 265, citing *Durban Apartments Corporation v. Catacutan*, 514 Phil. 187, 195 (2005).

<sup>57</sup> See *Cariaga v. Sapigao and Acosta*, 811 Phil. 819, 831 (2017), citing *Sy-Vargas v. The Estate of Ogsos, Sr.*, 796 Phil. 840, 850 (2016).

<sup>58</sup> See Petition, *rollo*, p. 23.

<sup>59</sup> *Quijano v. Amante*, 745 Phil. 40, 52 (2014).

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or inaction is negligence and not tolerance.<sup>60</sup> The Court explained in *Reyes v. Heirs of Deogracias Forlales*<sup>61</sup> that:

[. . .] acts merely tolerated are those which by reason of neighborliness or familiarity, the owner of property *allows* his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who *permits* them out of friendship or courtesy. They are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, *permits* others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well. And even though this is *continued* for a long time, no right will be acquired by prescription. [. . .]

There is tacit consent of the possessor to the acts which are merely tolerated. Thus, *not every case of knowledge and silence on the part of the possessor can be considered mere tolerance. By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission.*<sup>62</sup>

The fact of tolerance is of utmost importance in an action for unlawful detainer. Without proof that the possession was legal at the outset, the logical conclusion would be that the defendant's possession of the subject property will be deemed illegal from the very beginning, for which, the action for unlawful detainer shall be dismissed.<sup>63</sup> Thus, an action for unlawful detainer fails in the absence of proof of tolerance, coupled with evidence of how the entry of the respondents was effected, or how and when the dispossession started.<sup>64</sup>

The Court has meticulously examined the records and finds that petitioners failed to adduce evidence to establish that the respondents' occupation of the subject property was actually effected through their tolerance or permission. There is dearth of evidence to show how and when the respondents entered the subject lot, as well as how and when the permission to occupy was purportedly given by petitioners. Hence, there was no basis for the MTCC and RTC to conclude that respondents' occupation of the subject property was by mere tolerance of petitioners.

Finally, it was error for the courts *a quo* to rule in favor of petitioners merely on the basis of the Torrens title registered in their names. There is no question that the holder of a Torrens title is the rightful owner of the property thereby covered and is entitled to its possession.<sup>65</sup> However, the fact alone that petitioners have a title over the subject property does not give

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<sup>60</sup> See *Lozano v. Fernandez*, G.R. No. 212979, February 18, 2019.

<sup>61</sup> 787 Phil. 541 (2016).

<sup>62</sup> *Id.* at 554-555.

<sup>63</sup> *Quijano v. Amante*, supra note 59, at 53.

<sup>64</sup> See *Javelosa v. Tapus*, G.R. No. 204361, July 4, 2018.

<sup>65</sup> *Quijano v. Amante*, supra note 59, at 51.

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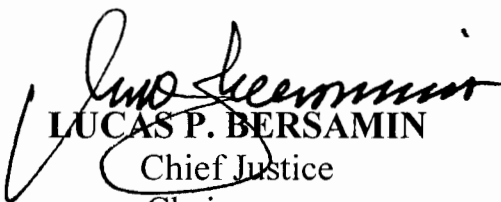
them unbridled authority to immediately wrest possession from its current possessor in the absence of evidence proving the allegations in their unlawful detainer claim. Indeed, even the legal owner of the property cannot conveniently usurp possession against a possessor, through a summary action for ejectment, without proving the essential requisites thereof. Accordingly, should the owner choose to file an action for unlawful detainer, it is imperative for him/her to first and foremost prove that the occupation was based on his/her permission or tolerance. Absent which, the owner would be in a better position by pursuing other more appropriate legal remedies.<sup>66</sup>

**WHEREFORE**, the petition is **DENIED**.

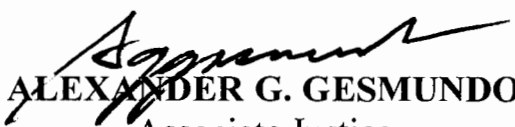
**SO ORDERED**.


  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

**WE CONCUR:**

  
**LUCAS P. BERSAMIN**  
 Chief Justice  
 Chairperson

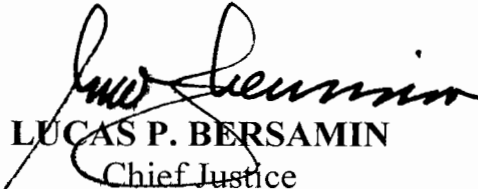
  
**FRANCIS H. JARDELEZA**  
 Associate Justice

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice

  
**ROSMARI D. CARANDANG**  
 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.

  
**LUCAS P. BERSAMIN**  
 Chief Justice

<sup>66</sup> *Javelosa v. Tapus*, supra note 64.