

In their Answer, defendants denied the allegations of the plaintiffs and contended that the property they are occupying is different from that lot owned by the plaintiffs. They assailed that the lot which is owned by the plaintiffs is a part of the fifteen and a half hectare lot originally belonging to Mr. Jose Vasquez, which was sold to Mr. Eutiquio Garzon. Mr. Garzon later divided the lot to his four children, namely: Jane, Allan, Irene, and Elnora. It was Irene who sold her share to Edna Balisbis.

Defendants averred that the same lot was the subject of a controversy before the Pangkat Tagapamayapa, of Bgy. Bucana, El Nido, Palawan as early as March 19, 1989. An Arbitration Award was granted in favor of the respondents, having found that the area in controversy is in excess of the fifteen and a half hectares (15 1/2 ha) purchased by Mr. Eutiquio Garzon. They however admit that Romuel C. Virgo was the caretaker of the lot belonging to the plaintiffs but reiterate that said lot is different from that of the defendants. Defendants stated that it was only Spouses Remegio and Amalia Francisco who received the demand letter and that no final demand letter was sent to the defendants.

Further, it was manifested that it is already the third time that the lot in question has been the subject to litigation for Recovery of Possession with Damages. One of the cases was docketed as Civil Case No. 2253, entitled Eutiquio Garzon vs Roman Liad, et al., filed before the Branch 50 of the Regional Trial Court of Palawan and Puerto Princesa City, which ordered the case dismissed for failure to prosecute on October 1990. Another case was then again filed, docketed as Civil Case No. 3079, entitled Jane M. Garzon, et al. vs Roman Liad, et al., before the RTC- Branch 95, which was also dismissed without prejudice on June 4, 1998, but the counterclaim of defendants was heard on the merits and was favorable decided on May 27, 1999. Lastly, the Arbitration Award which was considered in the granting of the counterclaim of the defendants in Civil Case No. 3079.

Defendants prayed that the complaint be dismissed for lack of merit and for the plaintiffs to observe and respect the boundaries of their lot. Damages are likewise prayed for by the defendants.

### ISSUES

The issues for Resolution are: 1) whether or not the property occupied by the defendants falls within the property of the plaintiff; and 2) whether or not the plaintiffs can recover possession from the defendants.

### RULING

This Court finds the Complaint to be meritorious.

The three usual actions to recover possession of real property are:

1. *Accion interdictal* or a summary ejectment proceeding, which may be either for forcible entry or unlawful detainer, for the recovery of physical or material possession where the dispossession has not lasted for more than one year, and should be brought in the proper inferior court;

2. *Accion publiciana* or the plenary action to recover the better right of possession, which should be brought in the proper inferior or Regional Trial Court; and