

**Affirmed and Opinion Filed June 14, 2018**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-17-01308-CV**

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**THOMAS BROWN, Appellant  
V.  
NOE SANCHEZ, Appellee**

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**On Appeal from the County Court At Law No. 1  
Kaufman County, Texas  
Trial Court Cause No. 17C-105**

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**MEMORANDUM OPINION**

**Before Justices Bridges, Brown, and Boatright  
Opinion by Justice Bridges**

In the underlying forcible detainer action, the trial court awarded appellee Noe Sanchez possession of appellant Thomas Brown's house. In a single issue, appellant argues the trial court lacked subject matter jurisdiction because a title dispute was inextricably linked to the question of immediate right to possession of the property. We affirm the trial court's judgment.

**Background**

Appellee's first amended original petition for forcible detainer alleged he purchased the property from Kaufman County, Texas after appellant lost the property through failure to pay ad valorem taxes. Appellee attached the Sheriff's Tax Deeds, the Tax Resale Deeds, and the Eviction Notice.<sup>1</sup> Appellee provided written notice to vacate and demand for possession by certified mail,

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<sup>1</sup> These documents were also admitted, without objection, during a hearing. We note appellant has not challenged the sufficiency of the evidence to support the trial court's ruling on possession but only the subject matter jurisdiction of the court.

but appellant failed to vacate the property. Subsequently, appellee asked the court to evict appellant.

Appellant answered the lawsuit and argued the eviction proceeding should be stayed because of a separate case involving title to the property in which he claimed “conduct and omissions of the named Defendants clouded the title to the property . . . and ultimately resulted in [a] foreclosure sale.”

Appellant subsequently filed a plea to the jurisdiction challenging the trial court’s subject matter jurisdiction. Appellant argued title to the property “was in dispute at the time of the purported foreclosure sale and the issue of both of the parties’ claim to title ownership of the property is subject of a bonafide dispute, the resolution of which must precede determination of the issue of the immediate right to present possession of the Property.” Specifically, he claimed wrongful foreclosure of the property. The trial court denied appellant’s plea to the jurisdiction and granted possession of the property to appellee.

### **Discussion**

A plea to the jurisdiction challenges the trial court’s authority to determine the subject matter of the action. *Gibson v. Dynegy Midstream Servs., L.P.*, 138 S.W.3d 518, 522 (Tex. App.—Fort Worth 2004, no pet.). Whether the trial court had subject matter jurisdiction is a question of law reviewed de novo. *See City of Dallas v. Carbajal*, 324 S.W.3d 537, 538 (Tex. 2010).

The plaintiff has the burden of alleging facts that affirmatively establish the trial court’s subject matter jurisdiction. *Gibson*, 138 S.W.3d at 522. If a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts that affirmatively demonstrate the trial court’s jurisdiction to hear the case. *Id.* Further, due to the special jurisdictional limitations imposed on justice courts, a plea to the jurisdiction in an eviction case may be based on an affirmative defense raised in the defendant’s pleadings that the trial court cannot resolve apart from

determining title. *Id.* In such a case, we determine whether the defendant is correct in asserting, in light of the defensive pleading, that questions of title and possession are so integrally linked that the justice court lacks subject matter jurisdiction over the case. *Id.*

A forcible detainer action is a procedure to determine the right to immediate possession of real property where there was no unlawful entry. *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). It is intended to be a speedy, simple, and inexpensive means to obtain possession without resort to an action on the title. *Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 926–27 (Tex. App.—Dallas 2010, no pet.). To maintain simplicity, the applicable rule of procedure provides that “the only issue shall be as to the right to actual possession; and the merits of the title shall not be adjudicated.” TEX. R. CIV. P. 746. Accordingly, the only issue in a forcible detainer action is which party has the right to immediate possession of the property. *Rice*, 51 S.W.3d at 709. When there are issues concerning both title and possession, the issues may be litigated in separate proceedings in different courts with appropriate jurisdiction. *Yarbrough v. Household Fin. Corp., III*, 455 S.W.3d 277, 280 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

In his plea, appellant disputed the validity of the “wrongful” foreclosure sale. However, allegations concerning the propriety of a foreclosure cannot be considered in a forcible detainer action. *Id.*; *see also Am. Homes 4 Rent Props. One, LLC v. Ibarra*, No. 05-13-00973-CV, 2014 WL 3212843, at \*2 (Tex. App.—Fort Worth July 8, 2014, no pet.) (mem. op.); *Murphy v. Countrywide Home Loans, Inc.*, 199 S.W.3d 441, 446 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). Rather, such allegations may be brought in a separate suit, which appears to be exactly what appellant has done by filing the separate suit.

To the extent appellant argues the title dispute must be determined prior to possession, meaning the issue of title is so intertwined with the issue of possession that a trial court would be required to determine title before awarding possession, he has failed to support his title claim with

specific evidence. *Falcon v. Ensignia*, 976 S.W.2d 336, 338 (Tex. App.—Corpus Christi 1998, no pet.) (specific evidence of a title dispute is required to raise the issue of jurisdiction). Appellant mentioned the separate cause of action in his pleadings and during the hearing; however, the mere mention of a title dispute is not enough. *See, e.g., Presley v. McGrath*, No. 02-04-403-CV, 2005 WL 1475495, at \*3 (Tex. App.—Fort Worth June 23, 2005, pet. dismiss’d w.o.j.) (counsel merely arguing that a concurrent suit was under way in federal court and allowing court and opposing counsel to read the complaint was not specific evidence of title dispute to challenge jurisdiction).

He also asked the trial court to take judicial notice of the pleadings in the other case. The trial court refused to take judicial notice of all the documents in the case, but agreed to take judicial notice of the original petition, the second and third amended petitions, and the answer. However, these documents were not discussed or admitted into evidence at the hearing and are not part of the appellate record. As such, we have nothing before us describing the specific alleged facts of the underlying title dispute. *See, e.g., Tillis v. Home Servicing, LLC*, No. 02-16-00171-CV, 2017 WL 817151, at \*4–5 (Tex. App.—Fort Worth Mar. 2, 2017, no pet.) (mem. op.) (amended judgment and notice of appeal relating to alleged pending title dispute in federal court, which was included in clerk’s record of forcible detainer action, was not “specific evidence” to challenge jurisdiction when neither document disclosed nature of dispute). *But see Yarbrough*, 455 S.W.3d at 279 (plea to the jurisdiction included attached copy of petition alleging deed of trust was forged). Without specific facts regarding the title dispute, justice courts may adjudicate possession even where issues related to the title of real property are tangentially or collaterally related to possession. *Falcon*, 976 S.W.2d at 338. Accordingly, we conclude the trial court did not err by exercising jurisdiction and granting relief to appellee. We overrule appellant’s sole issue.

**Conclusion**

The judgment of the trial court is affirmed.

/David L. Bridges/  
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DAVID L. BRIDGES  
JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

THOMAS BROWN, Appellant

No. 05-17-01308-CV      V.

NOE SANCHEZ, Appellee

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No. 1, Kaufman County, Texas

Trial Court Cause No. 17C-105.

Opinion delivered by Justice Bridges.

Justices Brown and Boatright participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee NOE SANCHEZ recover his costs of this appeal from appellant THOMAS BROWN.

Judgment entered June 14, 2018.