1 Phil. 497

[G.R. No. 1066. November 22, 1902]

SITIA TECO, PLAINTIFF AND APPELLANT, VS. THE HEIRS OF BALBINO VENTURA HOCORMA, DEFENDANTS AND APPELLEES.

D E C I S I O N

COOPER, J.:

The plaintiff, Sitia Teco, instituted an action in the Court of First Instance of Manila against the heirs of Don Balbino Ventura Hocorma, alleging in his complaint that the said Balbino Ventura Hocorma during his lifetime entered into a rental contract with the plaintiff by which a certain plot of land on Calle Santa Elena, District of Tondo, city of Manila, was let to him for the purpose of building upon it; that after the death of D. Balbino Ventura Hocorma his heirs collected the monthly rents which were due under the lease and thereby ratified the rental contract; that without just cause the defendants refused to receive the amount due for the month of February last, and are still refusing to receive the rents, and he seeks to establish against them the rental contract. The defendants deny in their answer that there was in the rental contract any provision with respect to the building by the plaintiff of a structure of any kind upon the leased premises, and deny any ratification of the rental contract from which it might be inferred that the plaintiff was to use the said premises for any particular purpose, and further state that the contract between D. Balbino Ventura y Hocorma, deceased, and the plaintiff was for no fixed term, and that in this respect the contract has not been changed by any supposed ratification; that the rent is monthly and under the provisions of article 1581 of the Civil Code the lease ceases, without the necessity of a special notice, at the expiration of the month; that under their right to terminate staid lease at the end of any month they elected to do so at the end of the month and gave the plaintiff notice of such intention, and thereupon the lease was terminated. The plaintiff contends that article 1581 of the Civil Code is not applicable to such renting; that, as the lot was leased for the purpose of placing a building thereon, this provision should not apply.

During the pendency of the suit the plaintiff applied for a preliminary injunction on the ground, as stated in the oral argument of counsel, that the house placed by the plaintiff upon the lot having been destroyed by order of the municipality the defendants repossessed themselves of the premises and were preparing to build a house thereon.

Upon a trial of the case judgment was rendered against the plaintiff on the merits of the suit, and the injunction was dissolved. The plaintiff has appealed the case by a bill of exceptions and has made application to this court to restore the injunction on the ground that the operative effect of the judgment by which the injunction was dissolved lias, by virtue of the appeal taken and the giving of a super sedeas bond, been lost, and that the judgment in the case should not have the effect of disturbing the interlocutory injunction. In the case of Watson & Co. vs. Enriquez, decided by this court October 26, 1902, it is held that an appeal from an order dissolving an injunction does not suspend the operation of the decision so as to revive the interlocutory injunction.

The applicant has also asked a preliminary injunction under the provisions of section 164 of the Code of Civil Procedure, 1901. It does not appear, from the allegations in the complaint nor in the application for injunction, that the plaintiff had a claim to the property under the lease for any particular time.

There seems to be no reason why the provisions of article 1581 of the Civil Code should not be applicable to the case, and why the owners are* not at liberty, as they have done in the case, to terminate the lease at the end of the month, the rent having been fixed by the month. If any equities could exist on account of the erection of a building upon the land by the plaintiff, a question upon which we express no opinion, the building having been demolished would render them ineffectual.

The case is stated vaguely, and the application upon which the interlocutory injunction was granted is entirely omitted from the bill of exceptions. What we understand of its contents has been gathered from the argument of counsel.

It may be stated also that the bill of exceptions is defective in a material respect: It does not appear from it that any exception was taken to any order, ruling, or judgment of the court.

Without entering into a discussion as to the circumstances under which a preliminary injunction under article 163 should be granted, after a preliminary injunction has been issued by the Court of First Instance, a full hearing had of the case on its merits, the case has been determined, the injunction dissolved, and an appeal taken to this court, it will be

sufficient to say that in this case the application does not show that the plaintiff is entitled to the relief that he requests, in that his right to the possession of the property is not shown. The application will be denied and costs of the same adjudged against the plaintiff.

Arellano, C. J., Torres, Smith, Willard, Mapa, and *Ladd, JJ.,* concur.

Date created: April 14, 2014