2 Phil. 651

[G.R. No. 1294. October 31, 1903]

THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, PLAINTIFF AND APPELLANT, VS. VICTORIANO DEL ROSARIO, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

This is an action to recover 555 pesos as rent for the years 1897, 1898, 1899, 1900, and 1901 of certain fields devoted to the cultivation of rice, and certain village lots, all within the hacienda of Santa Cruz de Malabon. The answer was a general denial. The following is the judgment in the case:

> "In this action the plaintiff company seeks to recover from the defendant rent for the use of certain lands situated in the Province of Cavite. The prayer of the complaint is based on the allegation that the property in question is occupied by virtue of a contract of lease, entered into between the defendant and the Dominican corporation, the former owner of the property.
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> "The rent claimed is for three different periods: (1) For the period during which the Dominican corporation was the owner of the land; (2) for the period during which the estate belonged to Mr. Richard H. Andrews; and (3) for the period during which the title to the property was held by the plaintiff company.
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> "The evidence taken at the trial does not prove the existence of an express contract of lease between the defendant and the Dominican corporation.
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> "Granting that the plaintiff company is the owner of the property in question, and that it was cultivated by the defendant during the period alleged in the complaint, as it has not been proved what the profits of the land should have

> been during the period referred to, no money judgment can be rendered against the defendant. In the absence of an express contract such proof is essential, in view of the fact that during the period in question the Province of Cavite was devastated by the ravages of war.
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> "The action against the defendant, Victoriano del Rosario, is therefore dismissed, with the costs to the plaintiff company."

The plaintiff at the trial below introduced a large amount of testimony to show that there had existed a written contract of lease signed by the defendant, and that the book in which it was contained was destroyed during the insurrection. This evidence has all been embodied in the bill of exceptions and is before us in the printed record. There was no motion for a new trial and the only exception taken was to the judgment

In the condition in which this case is found, it is impossible for us, in view of the provisions of section 497 of the Code of Civil Procedure, to pass upon any questions of fact decided by the trial court. We can not, for example, retry the question of fact as to whether or not the evidence showed a written contract between the plaintiff's grantor and the defendant. The lower court decided that there was no such contract, and that finding is conclusive on the appellant so far as this appeal is concerned. The only question open is whether the findings of fact in the decision support the judgment for the defendant. This doctrine had been repeatedly announced by this court before the bill of exceptions in this case was prepared.

We will accept, for the purposes of this appeal, the view of the appellant that the judgment must be considered as finding as a fact that the plaintiff was the owner of the lands and that the defendant had cultivated them during the time mentioned in the complaint. Even upon this basis the judgment was correct. It is stated therein that it was not proved at the trial what the lands ought to have produced during the time in question. This finding stands upon the same basis as the finding in regard to the written contract. There having been no motion for a new trial, we can not examine the evidence to see if the judge should have found from it what the value of the use of the lands was, or if he should have taken as a basis, as claimed by the appellant, the amount received by the owner in the years prior to 1897. An examination of the evidence for that purpose is not open to us.

The only question presented for decision is this: Where the defendant has been in the possession of and cultivating the lands of the plaintiff for four years and there is no express contract which fixes the rent to be paid, and where there is no evidence of the existence of

any implied contract which determines the rent, and where there is no evidence as to what the value of the use of the land was during this period and no evidence as to what it produced, can judgment be rendered against the defendant for any sum whatever? We agree with the court below that this question must be answered in the negative. It was the duty of the plaintiff to prove either an express or implied contract which fixed the rent, or what the value of the use of the lands was, or what they in fact produced. He did no one of these things. On the findings of the court below a judgment for any particular sum would have been unwarranted, for that court could not know from these findings whether the plaintiff should have 100 pesos, 1,000 pesos, or any other definite sum.

The appellant criticises the statement of the court to the effect that Cavite was devastated by war during this period. We agree with the appellee that no significance is to.be attached to this statement. The decision is complete without it. The judgment for the defendant rests upon the two propositions: (1) That no express contract had been proved, and (2) that the value of the use of the land had not been proved. The statement in regard to the war was rather a reason given why, in this case, the rule that such proof was necessary was particularly applicable.

The judgment is affirmed with the costs of this instance against the appellant. Judgment will be entered accordingly twenty days after the filing of this decision, and the cause will be returned to the court below for the execution thereof.

Arellano, C. J., Torres, Cooper, and *McDonough, JJ.,* concur.

Mapa and *Johnson, JJ.,* did not sit in this case.

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