4 Phil. 638

[G.R. No. 1743. August 12, 1905]

JOSE SORIANO, PLAINTIFF AND APPELLEE, VS. THE HEIRS OF F.L. ROXAS, DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

On the 1st day of April, 1886, plaintiff and F. L. Roxas entered into a contract of lease by which the plaintiff, the owner, leased to Roxas the house No, 17 in Calle Jolo, in Binondo, in this capital. The first clause of the lease was as follows:

> "First. The lease shall begin the first day of July of the present year and its duration shall be for an indefinite period but neither of the parties can terminate this agreement without previous notice of three months to the other party."

At the end of the written lease is the following clause, signed by the parties:

> "Note.—The first clause of this lease is canceled and substituted by the following: The lease shall begin July 1 of the present year and its duration shall be for an indefinite period, the lessee reserving to himself solely the right to abandon the premises on three months' notice. F. L. Roxas, V. A. Genato. Seals."

The lessee went into possession of the property described in the lease, and continued therein until his death in the month of January, 1897. Since that time the defendants who are his heirs, have been and

are now in possession of the property under said lease.

On the 2d day of August, 1902, the plaintiff gave the defendants written notice to quit the premises within forty days from the date of said notice. The defendants refused to do so, and this action was brought to eject them. It was decided in the court below in favor of the plaintiff, upon the ground that the contract of lease could be terminated by the plaintiff upon forty days' notice. From the judgment in favor of the plaintiff the defendants have appealed.

We agree with the claim of the appellants that the effect of the change made by the parties in the first clause of the lease was to make it a lease at the will of the tenant; in other words, that the tenant had the right to occupy the property so long as he wished to, upon complying with the terms of the contract; but we do not agree with their further claim, that the heirs, devisees, or legatees of the tenant had and have the right so to occupy it as long as they wish. The appellants base this further claim upon the proposition that upon the death of a person all his rights and obligations pass to his heirs, devisees, or legatees.

This lease was made prior to the Civil Code, and consequently its effects must be determined by the laws in force here prior to 1889. We do not think that these laws (The *Partidas*) provided for a case of this kind. Law 2, title 8, partida 5, in speaking of the term of a lease, says that it may be for a definite time, or for the life of the tenant, or for the life of the owner. Law 19 of the same title, in, speaking of the two cases in which a purchaser can not eject the tenant, contains the following statement:

> "The second is when the vendor has obtained it, for his whole life (7), from his grantor, or forever, also the life of his heirs, devisees, or legatees."

We do not think that this clause supports the contention of the appellant.

The precise claim made by them is discussed by Escriche, and decided adversely to them. This author, in his Dictionary of Legislation and Jurisprudence (vol. 1, p. 719), makes the following statement:

> "The lease does not terminate by the death of the lessor or by that of the lessee, rather it is obligatory in the same manner upon the heirs of both parties, unless the contrary is provided in the lease:law No. 7, title 17, book 3, Law of Realty; law No. 2, title 8, *partida* 5; decree of Court of Chancery (*Cortes*) of June 8, 1813. The reason is that *todo ome que faze pleyto o postura con otri, que lo faze tambien pot sus herederos, como por si,*according to the language of law 11, title 14, *partida* 3. * * *
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> "There is also excepted the lease which is not made for a definite time, but during the pleasure of the lessor; since it terminates by the death of the latter. *Locatio precative ita facta, quoad is qui loeasset vellet, morte ejus qui locavit tollitur*; 1.4, ff. locat. For the same reason if the lease continues indefinitely during the pleasure of the lessee, it terminates by the death of the lessee."

The claim of the appellants finds no support in the Roman law. Law 4 of title 2, book 19 of the Digest, is as follows:

> "Locatio precariive rogatio ita facta, quoad is, qui earn locasset dedissetve, vellet, morte eius, qui locavit, tollitur."

Neither does it find any support in the French law. Article 1742 of the Gode Napoleon is as follows:

> "A lease is not rescinded absolutely by the death of the lessor or lessee."

Troplong, in his commentaries on this code (Le Droit Civil Explique 3d edition, vol. 10, p.

14,) says:

> "If the lease is made for an indefinite period and with this clause: at the pleasure of *the lessor*,
> it is evident that the death of the latter terminates all force of this clause because the concurrence of the good intent, which is necessary for it to exist, vanishes.
>
> "These are the words with which
> President Pavre affirms this decision of Pomponius (2) : 'Voluntas finitur morte. Ideoque quod in alicujus voluntatem expressim confertur, conditionem quamdam injicit, quae volentis personam non egreditur (3).?
>
> "The result would be the same if the lease was made to continue *during the pleasure of the lessee*(4)."

In Jurisprudence Generale; Repertoirs Methodique et Alphabetique de Legislation, Dalloz, vol. 30, page 296, the following statement is made:

"89. The agreement contained in a lease, that the lessee shall continue in possession of the realty at his pleasure is not relatively a potestative condition in the legal sense of the word, when from the terms of the contract there results an obligation between the parties, such as the obligation of the lessee to occupy the place, to furnish it, to pay rent according to custom, etc. * * * This indefinite clause should be, in relation to the terms of the contract, interpreted in the sense that the intention of the lessor was to rent the thing to the lessee during all the life of the latter. (Paris, July 20, 1840) (1)."

In volume 10 of the supplement (1892) to the work last cited, page 207, the following statement is made:

> "303. When the lease is made for a definite period,
> it terminates at the expiration of the time fixed (see the explanations given concerning this matter, Rep. Nos. 527 and following). If it was agreed by the terms of the clause of the lease that the lessee was to

> continue in possession of the premises rented at his pleasure or during the existence of the property, it should be considered as authorized for the life of the lessee, except the right of the latter in the first case, to abandon the premises at his convenience. (See Aubry and Rau, t. 4, paragraph 369, note 16, p. 498; Guillouard, t 1, No. 408; Laurent, t. 25, No. 317; Paris, June 4, 1859, aff. Gaibrois, D. P. 59, 2, 116)."

There is nothing *decided* in this court in the case of Eleizegui *vs.* The Manila Lawn Tennis Club[1]
(1 Off. Gaz., 374) which is contrary to the doctrine enunciated in the foregoing authorities. In that case the lease in question was made after the Civil Code went into effect in these Islands, and the court applied to it the provisions of article 1128 of that code. This case, as has been said before, is not governed by the provisions of the Civil Code, but by the law existing prior to 1889. Moreover, in that case the tenant was not a natural person, but an association or corporation, and the lease provided that the tenant should hold it for all the time the members of the said club might desire to use it.

We follow the authorities which have been cited, and hold that this lease terminated at the death of Roxas in 1897. At the time of this termination the Civil Code was in force, and the rights of the parties at such termination would be governed by that code. The occupation of the property by the defendants after the death of their ancestor was by virtue of the tacit renewal mentioned in article 1566. By the terms of the original lease the rent was payable monthly, and this being urban property, article 1581 of the Civil Code is applicable. The defendants therefore, since 1897 have been and now are in possession merely as tenants from month to month, and the plaintiff had the right to eject them at the end of any month, and was entitled to the possession of the property when this action was brought.

The judgment of the court below is affirmed, with the costs of this instance against the. appellants. After the expiration of twenty days judgment will be entered in conformity herewith and the cause will be

returned to the lower court for execution. So ordered.

Arellano, C. J., Mapa, Johnson, and *Carson, JJ.,* concur.
Torres, J., did not sit in this case.

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[1] 2 Phil. Rep., 309.

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