46 Phil. 868

[G.R. No. 20731. October 22, 1923]

ANDRES GARCIA MAYORALGO, PLAINTIFF AND APPELLANT, VS. PRIMITIVO JASON, DEFENDANT AND APPELLEE.

D E C I S I O N

ROMUALDEZ, J.:

The plaintiff seeks to recover from the defendant the sum of P10,200, as the rental of certain premises at the rate of P300 per month, for the period between July 1, 1919, and April 30, 1922, plus P122.35 for water used, with legal interest thereon and costs.

The defendant denies generally and specifically the facts alleged in the complaint, and alleges as a special defense that the rent of the premises occupied by him during said period is only P100 per month; and sets up a counterclaim for the sum of P10,000 for damages caused by an attachment procured by the plaintiff and levied upon a drug store run by the defendant.

After trial, the lower court adjudged and decreed that the rent which the defendant was bound to pay was P100 per month, and rendered judgment against him for P3,410, as the rental corresponding to the period of time during which the defendant has occupied the premises, which was from July 1, 1919, to May 3, 1922. It likewise found the defendant liable to the plaintiff only for one-half the amount of water consumed, that is to say, P61.18.

The plaintiff appeals from said judgment, alleging that the lower court erred:

> "1. In not finding that a contract enforceable by action was perfected between the plaintiff and the defendant, whereby the latter had agreed to pay

the plaintiff P300 as monthly rental of the premises leased.

"2. In not sentencing the defendant to pay the plaintiff, agreeably with the contract entered into, the stipulated rents corresponding to the months of from July, 1919, to May 3, 1922, at the rate of P300 per month aggregating the sum of P10,230.

"3. In finding that the plaintiff allowed the defendant to continue occupying the premises in question by the month after June 30, 1919, without requiring him to vacate them or to pay the increased rents.

"4. In holding that the defendant had the right to continue occupying the premises in question by paying the same rents as before July 1, 1919.

"5. In not rendering judgment against the defendant for the costs of the suit, as well as the proper interest upon all the amounts due to the plaintiff and claimed by the latter.

"6. In not granting the motion for new trial presented by the plaintiff on the ground that the decision is against the law and is not sufficiently supported by the evidence introduced at the trial."

The first assignment of error raises the question whether the contract of lease existing on July 1, 1919, was the same as that entered into by the parties prior to said date, or different. The defendant contends that it was the same, on the ground that there was a tacit renewal, inasmuch as he continued to enjoy the premises leased during that whole period of time aforesaid with the acquiescence of the plaintiff.

This contract of lease was, among other things, the subject of a judicial controversy between the same parties, this court having, on April 12, 1922, solved the question in the sense that the term of the lease was one year, which expired June 30, 1919, and not by the month, as the plaintiff claimed, nor by the year and subject to be extended for five years, as the defendant contended.[1]

Before this ruling of the Supreme Court, the defendant, on March 25, 1919, brought an action against the plaintiff to compel him to execute a deed of lease

for one year ending July 1, 1919, subject to be extended for five years at the option of the lessee.

The herein plaintiff, in turn, through his attorney, sent the defendant, a few days later, a letter (Exhibit A) as follows:

"MANILA, *March 29, 1919.*

"Mr. PRIMITIVO JASON,
"1002 A. Mabini, Manila, P. I.

"SIR: As the attorney of Mr. Andres Garcia y Mayoralgo, I have to advise you as follows:

"After the last day of this month the lease of the premises belonging to my client and which you are occupying, that is to say, the ground floor of house No. 1002 A. Mabini, District of Malate, will be terminated and I hereby notify you to vacate the same.

"In case you should not vacate and deliver the same on the last day of this month, I will take it that you accept the new conditions of the lease of said premises, that is to say, that the rent is P300 per month, payable in advance within the first five days of the respective month; you should therefore pay the rent for the month of April next not later than the fifth day of said month.

"Respectfully,

(Sgd.) "JOSE VARELA CALDERON"

To this letter the defendant answered, through his attorney, with the following, which is Exhibit 2:

"*March 29, 1919.*

"Mr. JOSE VARELA CALDERON,
"16 Escolta, Manila.

"MY DEAR FRIEND: My client Mr. Primitivo Jason has handed me your letter of the 29th instant to answer it.

"Following the instructions of my said client I have to tell you that the lease of the premises in question (1002, Calle A. Mabini) does not terminate on the last day of this month but on the first of July, 1919, it being optional on the part of Mr. Jason to consider said term extended from year to year until 1923. The agreed rent is P100 per month.

"Mr. Jason cannot understand, therefore, on what ground Mr. Andres Garcia raises the rent to P300 per month. He does not agree with this new condition and abides entirely by the stipulation had with Mr. Garcia. Besides, there is pending at present an action brought by Mr. Jason against Messrs. Garcia and Enriquez Perez for specific performance of the contract, in which action there is involved the question of the lease of the ground floor of the property in question.

"That is all I can tell you.

"Yours truly,

"Attorney for Mr. Primitivo Jason"

On April 7, 1919, the plaintiff, through his attorney, wrote the defendant again, sending him the following letter Exhibit B:

"MANILA, *April 7, 1919.*

"Mr. PRIMITIVO JASON,
"1002 A. Mabini, Malate,
"Manila, P. I.

"SIR: Under date of the 29th of March last, I sent you a letter as follows:

" 'Sir: As the attorney of Mr. Andres Garcia y Mayoralgo, I have to advise you as follows:

" 'After the last day of this month the lease of the premises belonging to my client and which you are occupying, that is to say, the ground floor of house No. 1002, A. Mabini, District of Malate, will be terminated and I hereby notify

you to vacate the same.

” ‘In case you should not vacate and deliver the same on the last day of this month, I will take it that you accept the new conditions of the lease of said premises, that is to say, that the rent is P300 per month, payable in advance within the first five days of the respective month; you should therefore pay the rent for the month of April next not later than the fifth day of said month.

” ‘Respectfully,

” ‘JOSE VARELA CALDERON’

“Notwithstanding that you received said letter you have not vacated the premises referred to, nor delivered possession thereof to my client.

“Neither have you paid up to this time the sum of P150, the rent corresponding to the last month of March of the premises aforementioned, that is to say, the ground floor of house 1002, Calle A. Mabini, Malate.

“In view thereof and as a prerequisite for the filing of a complaint, I hereby require you to pay within the period of three days the sum of P150, as rent of the premises in question for the last month of March, plus P300, Philippine currency, for the indivisible rent of this month of April and besides to vacate the premises aforesaid.

“Very respectfully,

(Sgd.) “JOSE VARELA CALDERON”

In view of this attitude of the parties, it cannot be said that there was a mutual agreement between the parties either as to the term of the lease, or the new rent of P300 per month demanded by the herein plaintiff. Consequently the conclusion cannot be established that the herein defendant agreed with this new amount of rent, demanded in the letter Exhibit A of the plaintiff.

If the particular period of the lease discussed by the parties in this action had begun from April 1, 1919, and there had been no question between the parties

as to the term of the lease, it would be proper to consider the letters of the plaintiff, Exhibits A and B, which have reference to said date, as a demand to prevent the tacit renewal. But said letters having been written, with knowledge on the part of the plaintiff that the defendant did not recognize that the lease was to terminate each month, but contended that it did not expire until the end of June, 1919, and could be extended at his will for five years more, said letters written in March and April cannot be considered as a demand for the return of the property on the 1st of July, which date the plaintiff himself, the author thereof, did not recognize as the agreed date for the termination of the lease which he contended was by the month.

It may be added that the preponderance of evidence shows that the P100 monthly rent of the premises occupied by the defendant is reasonable, and we find that the remarks and findings made by the trial court on this point in its decision are correct.

It is true that the plaintiff expressed his intention to require the defendant to pay a rent of P300 per month beginning with April 1, 1919; but it is also true that the defendant likewise expressed his attitude not to consider himself bound to pay such a new amount of rent, on the ground that the contract entitled him to continue occupying the property at least until the end of June of that year, at the stipulated rent of P100.

The question of the term of the lease having been judicially raised between the parties since March, 1919, which question continued unsolved when the letters A and B were written, the way was open for a tacit renewal upon the failure to demand delivery of the property on July 1, 1919, the date when according to the defendant himself the original contract expired. And this demand could have been made in such a manner as not to imply any acknowledgment or admission of the theory maintained by the defendant, but only as a precautionary measure and as an inequivocal expression of the will of the plaintiff that, in the hypothesis that the term of the lease was to expire on the last day of June, 1919, he required the defendant either to deliver the property on July 1, 1919, or to pay a higher rent from that date.

In view of the circumstances of the case, the letters A and B have no legal effect as a demand, because their contents were based on a term of the lease

then in question between the parties in court, which letters by reason of the defendant continuing to occupy the property and the plaintiff not making any further demand, left the juridical relation then existing between them in *statu quo*. And this juridical relation which was not altered was the one created by the original contract, inasmuch as the letters A and B could not, as we have stated, have the effect of modifying it. And this original legal bond subsisted unaltered throughout the judicial controversies between them until it was finally decided that the term of the lease, according to the contract, was one year which terminated at the end of June, 1919. But this final decision did not affect the amount of the rent as originally stipulated.

As regards the water consumed, the evidence shows that the sums paid by the plaintiff on this account are for the water consumed in the floor occupied by the defendant as well as in the upper story occupied by the plaintiff. We find the conclusion of the trial court to be just in fixing against the defendant only one-half the amount of said total consumption.

As to the interest claimed by the plaintiff, we note that the defendant from the beginning acknowledged being under obligation to pay the monthly rent of P100. As he did not pay the same since the month of July, 1919, and it does not appear in this case that he ever offered to pay plaintiff said rent in due season, we hold that the plaintiff is entitled to recover legal interest on the sum due, computed from the respective dates each monthly rent became due.

We find no reversible error in the judgment appealed from although we do find error requiring a modification thereof in the sense above indicated.

Wherefore the judgment appealed from is affirmed with the only modification that the defendant stands also sentenced to pay the plaintiff legal interest on the sum adjudicated to the plaintiff by the trial court as rent, which interest shall be computed from the respective dates on which each monthly rent became due until full payment.

Without express finding as to costs. So ordered.

Johnson, Street,
Malcolm, Villamor, and *Johns, JJ.,* concur.

[1] G. R. Nos. 16743 and 16752, not reported.

Date created: June 17, 2014