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[G.R. Nos. L-1433 to L-1435. June 30, 1948]

EDILBERTO MORALES, PETITIONER, VS. MELECIO ZAMORA, RESPONDENT

D E C I S I O N

BENGZON, J.:

These three cases jointly tried and decided in the Court of First instance of Manila by agreement of the parties, were on appeal disposed of by the Court of Appeals in one single decision. They are presently before us upon petition for certiorari.

In the first, Edilberto Morales seeks to compel Melecio Zamora to accept the sum of P30 as monthly rental for May, 1945, of the premises he actually occupies as lessee at 1204 Rizal Avenue, Manila. The second, is a suit by Zamora to eject Morales from the same premises. And the third is another action by Zamora to recover damages occasioned by Morales refusal to vacate. The Manila court dismissed the first and third cases but ordered, in the second, that defendant Edilberto Morales shall surrender the premises to the plaintiff Melecio Zamora paying to him P30 monthly from May 1, 1945, up to the time he leaves the place. Costs were also awarded. The Court of Appeals affirmed the decision in *toto*.

Edilberto Morales brought these cases up for review. Hereafter to be called petitioner, he submits these two main propositions: (*a*) "That Republic Act No. 66 specifically provides that the plaintiff-appellant herein cannot be ejected from the premises because the one year period as specifically provided in the said act has not yet elapsed" and (*b*) "that the decision of the Court of Appeals declaring the premises commercial is against the provision of Republic Act No. 66 as stated in the last sentence of Section 1 of the said Act".

The Court of Appeals found, — and we must accept its findings of fact —"that pursuant to an oral lease contract between Melecio Zamora and Edilberto Morales, the latter, since the month of December, 1941, had been occupying the premises in litigation located at 1204

Rizal Avenue, where since then he has been operating a barbershop, at a monthly rental of P25 payable during the first five days of each month, which amount was later raised to P31 s month. It also appears, without contradiction on the part of Morales, since the month of November, 1944, that he failed to pay the monthly rent on time, and for this reason, and because appellee Zamora needed the premises in question to establish therein a business of his own, on May, 1945, he notified appellant (Exhibit A) that the lease contract had expired and that he should vacate the premises accordingly. Morales contended that Zamora did not object to his continuing in the occupancy of those premises as long as he kept paying the monthly rentals, but as already stated, the payment of the rentals was very irregular and in violation of the terms of said contract."

Said Court of Appeals concluded from the above statement that the owner was entitled to his realty under the provisions of article 1581 of the Civil Code providing that "if no term has been fixed for the lease, it shall be understood as from year to year when an annual rent has been fixed, from month to month when the rent is monthly, and from day to day when it is daily".

The appellate court refused to apply the amendatory provisions of Commonwealth Act No. 689 and Republic Act No. 66, explaining that these were not intended to cover "buildings or houses located in a commercial zone and devoted, as the one involved in this litigation, to Hie business of a barbershop". In amplification of its view, the court reasoned "that Rizal Avenue, starting from its intersection with Echague Street in a northerly direction up to its intersection with Blumentritt Street, is within the purlieus of a commercial or business district. There is hardly any single building or premises located on Rizal Avenue which is not occupied for some business or commercial enterprise or purpose, but even granting that the upper portion of any such building were occupied for dwelling, such fact does not nevertheless change the nature of the premises which is controlled by its location".

This last consideration is forcefully questioned by the attorney for herein petitioner. There may be some ground to his protest against the pronouncement that the premises are to be deemed commercial *simply because they are located in Rizal Avenue between Echague and Blumentritt streets*. But the fact remains that said court found that herein petitioner used the premises for his "barbershop business" — and that he may not invoke Republic Act No. 66 which applies to "dwellings" only.

On the other hand, it appearing that the upper portion of the structure is used as residence of the family of Morales he quotes the same law which directs that "buildings used both as

dwelling of the lessee and also as place of business of the latter for home industries intended for the support of the family shall be deemed included in the provisions of this Act" (Republic Act No. 66).

On this question we note that the Court of Appeals found the place devoted to "the business of a barbershop". The respondent states without contradiction that petitioner's establishment has six chairs (barber's) and employs a number of hair-cutters who do not belong to his family. Wherefore, under the circumstances we do not believe that herein petitioner may successfully plead the maintenance of a "home industry" as distinguished from a business establishment. When a barber or tailor pursues his calling by serving customers in his dwelling, he is merely exercising a home industry and his place of abode does not thereby become commercial. But when he engages other tailors or barbers to expand his business and increase his returns, his establishment becomes commercial, and the incidental fact that his family lives therein would not include him in that class of tenants especially favored by recent emergency legislation on housing.

It would be ridiculous indeed to hold that the well-appointed barbershops of Sta. Cruz and Quiapo would be considered "residences" simply because the family of one of the barbers happened to be quartered there.

This distinction between the pursuit of his industry by an artisan (tailor, barber, shoemaker, tinsmith, etc.) and his setting up of a commercial establishment for purposes of gain and employing others, is admitted fin legal circles.

For instance, the sales made by artificers in their workshops of the objects produced by them is, by express statutory provision, considered civil. (Article 326, Code of Commerce). But authors are unanimous that some sales are commercial, where the artificer for purposes of gain, sets up a shop, and employs others, etc.

> "It is indisputable that, taking into account the nature of the mercantile purchase and sale, the sales made by artificers of the products of their labor deserve the qualification of being mercantile, provided always that they have to purchase in order to resell the materials on which they exercise their trade. It is, however, to be admitted that not all of them have the same end in view when they acquire the necessary materials for manufacturing purposes, or when they sell the articles manufactured by them. Some of them perform these acts as an indispensable means of the exercise of their industry, while others, on the contrary, execute the

> same with the purpose of obtaining gain or profit. This difference in purpose which serves to attribute or deny mercantile character to the same act, is generally manifested by the circumstances under which the artificer or manufacturer sells his products. When he does not execute the work himself, *but desiring to obtain profit, employs laborers who are paid by him* in order to have at the disposal of the public a large supply of the articles manufactured by them, and exposes such articles in shops or establishments, it is evident that such person has in view speculation or profit. But he who confines himself to the manufacture, in his own shop, under orders placed with him, of articles which constitute his industry or art, has no other purpose but to obtain a livelihood from the product of his industry. *Because of this difference*, sales made by the former class of artificers are regarded commercial, and those by the latter as civil." (3 Echavarri 245-246; 3 Estasen 212-213.) (Italics ours) (Code of Commerce by Tolentino, Vol. I, pp. 175-76).

For these reasons we concur in the view of the Court of Appeals that petitioner herein may not validly invoke the provisions of Commonwealth Act No. 689 and Republic Act No. 66. Being of that opinion, we deem it unnecessary at this time to consider or expound the extent and scope or practical application of the change effected by the one-year period provided in the aforementioned statutory enactments.

Judgment affirmed. No costs.

Parás, Actg. C.J., Feria, Perfecto, Padilla, and *Tuason, JJ.,* concur.

DISIDENTE

PABLO, *M.*:

Edilberto Morales obtuvo en arrendamiento el local No. 204 de la Avenida Rizal desde 1941 bajo renta mensual P25 que después se aumentó a P31, y en Mayo de 1945, Nemesio Zamora, el arrendador, le avisó que lo desalojase porque tenia que establecer un negocio. Por eso, surgieron estos tres asuntos en el Juzgado Municipal Manila: No, 71003 70249 por mandamus, No. 70732 por desahucio, y No, 71003 por daños y perjuicios. El primero fué presentado por Edilberto Morales pidiendo que el Juzgado ordanase al arrendador que

acepte el alquiler da P30 correspondiente al mos de Mayo de 1945, lo que revela que el arrendador no quiso recibir la renta para Justificar I la causa de desahucio que posteriormente presentó. Los números de estas causas demuestran claramente que la de mandamus se presentó con mucha anterioridad que la de desahucio. Sin embargo, se sobreseyó la primera y se condenó al arrendatario a desalojar el local.

La mayoria dice:" "The respondent (Nemesio Zamora) states without contradiction that petitioner's establishment has six chairs (barber's) and employes a number of hair-cutters who do not belong to his family. Wherefore, under the circumstances we do not believe that herein petitioner may successfully plead the maintenance of a 'home industry' as distinguished from a business establisment." Y Edilberto Morales asegura también, sin contradicción alguna, que su familia vive en el mezzanine del local y en el piso bajo está su barberia que le da lo suficiente para el sostenlmiento de su familia. declaraciones no contradichas de ambas partes en sus escritos, se puede concluir que el local en controversia es alojamiento de Edilberto Morales y de su familia y al mismo tiempo barberia.

Si por exigencias del aumento de la población del vecincindario fué necesario dar acomodo a otros barberos, no podemos conciur necesaríamente que el establecimiento sea comercial. Es completamente diferente un establecimiento de barberia, montado como negocio en un centro comercial, de una humilde barberia que es al mismo tiempo vivienda del arrendatario y de su familia. La barberia no se convierte en establecimiento comercial por el simple hecho de que otros barberos hayan trabajado con el recurrente. La ayuda de otros barberos no convierte una vivienda de un barbero en un establecimiento comercial. La mejor prueba sobre este particular seria el costo del mobiliario que se usa y el ingreso diario de la barberia. Porque trabajan otros barberos no por eso deja ser vivienda del barbero el local, y que se convierte automáticamente en establecimiento comercial. Lo incidental en el caso presente es el acomodo do otros barberos. El local cotitinúa siendo la residancia del barbero y de su familia. Y no hay prueba de que esa barberia estuviese dando más rendimientos de lo que la familia del barbero necesita para su subsistencia diaria.

El fin, primordial de la Ley No. 66 es no obligar al arrandatario a desalojar la finca bajo las disposiciones del Código Civil durante el tiempo de emergencia si la casa es su vivienda y lugar de su negocio casero para el mantenimiento de su familia.

En el asunto de Kalaw Ledesma contra Pictain, este Tibunal dijo: "Los demandantes arguyen que el local en cuestión está en una calle comercial en donde están la Estrella del Norte, Squires Bingham, Riu Hermanos, La Suiza, y que no está sujeto a las disposiciones de la No.

66 de la República. Según la misma declaración jurada de uno de los demandantes, el local ocupado por el demandado lo utiliza él para una barberia y para vivienda de su familia. Ese local es más indispensable para la manutención de la familia del demandado que para negocio en perspectiva de los demandantes. El alojamiento es para e1 hombre tan necesario como el alimento, Desahuciar, bajo las presentes circumstancias, al demandado es desposeerle del único medio de que se vale para alimentar a su familia. Los demandantes, aún sin ese proyectado negocio, pueden continuar viviendo. El demandado debe ser desahuciado del local: el articulo 1.º de la Ley, No. 689 del Commonwealth, tal como fué enmendado por la Ley No. 66 de la República, dice que 'se considerará incluido en las disposiciones de esta Ley, el edificio usado no solamente como habitación del arrendatario sino también como lugar de negocio de éste para industrias caseras dcstinadas a la manutonción de su familia.' Esta disposición legal ésta inspirada indudablemento en el sentimiento elevado y sublime que distingue el hombre de los demás seres: el do no privar al prójimo de su pan de cada día."

Tenemos que tratar con justicia a los desheredados de la fortuna si no queremos que el germen del comunismo haga estragos.

En mi opinión, el recurso debe ser concedido.

DISIDENTE

BRIONES, *M.*:

El Tribunal de Apelación decidió este asunto a favor del recurrido-propietario bajo el entendimiento de que la finca ocupada por el recurrente-arrendatario es comercial, toda vez que está ubicada en la Avenida Rizal, ciudad de Manila, y toda dicha Avenida ea comercial desde la calle Echague hasta la calle Blumentritt. Parece que la mayoría de esta Corte Suprema no acepta tal conclusión, adoptada arbitrariamente y de modo absolute, sin prueba competente que la soporte. La mayoría prefiere adoptar otro fundamento, a saber; que el recurrente no puede invocar la exención provista en el art. 1 de la ley No. 66 de la República, puesto que si bien es verdad que el mismo vive en la finca y tiene alli establecida su barberla – ésta no puede clasificarse como industria casera (*home industry*), de que habla dicho articulo, habiendo en la misma 6 sillas, y siendo, por tanto, una barberia comercial.

¿Puede esta Corte, en su jurisdicción apelada, considerar un hecho que no fué propiamente discutido por las partes ante el tribunal *a quo* – más todavia ni siquiera se ha establecido adecuadamente en la sentencia objeto de revision? Creo que no. En el presente caso, por ejemplo, no podemos inferir la naturaleza comercial de la barberia del simple hecho de que en ella hay 6 sillas, ni mucho menos podemos deducir de tal circunstancia la otra conclusión que saca la mayoría de que el arrendatario-barbero tiene debe tener asalariados a otros barberos, pues todo ello es simple conjetura y no consta establecido de manera eficaz y competente en autos, ya que, como queda dicho, la sentencia del Tribunal de Apelación está fundada en la conclusión arbitraria de que toda la Avenida Rizal es comercial desde la calle Echague hasta la Calle Blumentritt. ¿Que razón tenemos para concluir que el recurrente tiene asalariados a otros barberos? ¿No pudiera ser que sus hijos le ayudan y de ahí esas 6 sillas de que habla la mayoría, suponiendo que realmente las haya? ¿Y si fueran solamente 2 o 3 sillas? ¿Sería ya entonces "*home industry*"?

Hay una circunstancia que inclina fuertemente el ánimo a creer que se trata de una pequeña barbería, sin importancia comercial, y es que antes de la guerra el alquiler de la accesoria en cuestión era solo P25 mensuales; es decir, el alquiler de una modesta residencia.

Creo, por tanto, que debe revocarse la sontencia y dictarse otra a favor del recurrente. Mucho temo que la decisión de la mayoría venga a fomentar codicias mal reprimidas.

Judgment affirmed

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