

95 Phil. 848

[ G.R. No L-6205. September 28, 1954 ]

**DIONISIA CAÑAVERAL AND RUFINO BAUTISTA, PETITIONERS, VS. THE HONORABLE JUDGE DEMETRIO C. ENCARNACION OF THE COURT OF FIRST INSTANCE OF MANILA (BRANCH I), SERENIDAD V. SURIO AND MAXIMO VILLACORTA, RESPONDENTS.**

## **D E C I S I O N**

### **CONCEPCION, J.:**

This is a petition for certiorari and mandamus to set aside and annul a decision rendered by the Court of First Instance of Manila in Civil Case No. 13306 thereof, entitled “Serenidad V. Surio and Maximo Villacorta vs. Dionisia Cañaveral and Rufino Bautista”, as well as an order of said court denying a reconsideration of said decision, and to compel said court to remand the case to the Municipal Court of Manila “for further proceedings in accordance with section 10, Rule 40, of the Rules of Court.”

It appears that on April 19, 1949, Dionisia Cañaveral executed, with the consent of her husband, Rufino Bautista, an instrument, entitled “Deed of Pacto de Retro Sale,” conveying, to Serenidad Surio, married to Maximo Villacorta, “two parcels of land with the building and improvements thereon, situated at 1403 Basilio, Sampaloc, Manila” and more particularly described in said document, subject to redemption within 12 months and to the right of the vendor to “continue occupying the premises in the capacity of a lessee at a monthly rent of P40 within a period of one year.” On November 4, 1950, the Villacortas instituted in the Municipal Court of Manila Civil Case No. 13621, against the Bautistas, for illegal detainer. In the complaint therein filed, the Villacortas alleged that they are owners of the property above referred to, by virtue of said “Deed of Pacto de Retro Sale,” and

that the Bautistas refuse to vacate said property despite their failure to pay the agreed monthly rental and the repeated demands made by the Villacortas. Subsequently thereto, or on December 19, 1950, the Bautistas commenced Civil Case No. 12803 of the Court of First Instance of Manila, against the Villacortas, for a declaration, among other things', that the deed already adverted to does not express the true intent of the parties thereto, which was alleged to be only to make a "contract of loan with security." This pretense was reiterated by the Bautistas in their answer in the ejectment case, in which pleading they, likewise, alleged the pendency of said Civil Case No. 12803 of the Court of First Instance of Manila. In said answer, the Bautistas, also, contested the alleged right of the Villacortas to the possession of the property in dispute, upon the ground that the same belongs to the former and that the true intent of the parties to the aforementioned deed was merely to constitute a mortgage. After due trial, the municipal court issued an order, dated February 2, 1951, reading:

"Considering that according to the evidence adduced by the parties in this case, the main issue that is raised before the Court is the question of ownership; and considering that the question of possession cannot be decided in this instant without first deciding the question of ownership, the Court finds it has no jurisdiction to proceed further.

Wherefore, this case is hereby dismissed. Without pronouncement as to costs."  
(Record p. 29.)

The Villacortas appealed from this order to the Court of First Instance, where the case was docketed as Civil Case No. 13306 and the Bautistas reproduced the answer filed by them in the municipal court. In due course the court of first instance then presided over by Hon. Demetrio Encarnacion, Judge, thereafter rendered a decision, dated February 20, 1952, the dispositive part of which is as follows:

“Por todo lo expuesto, encontrando el Juzgado bleu fundada la demanda, con gran preponderancia de pruebas a favor de loa demandantes, se dicta sentencia condenando a los demandados a pagar a dichos demandantes los alquileres arriba reclamados, de P240 acumulados desde Abril 19, 1949 hasta Octubre 19, 1950, mas P40 men suales desde esta f ecba hasta que se vaquen las propiedades en cuestion y se entreguen a los demandantes.

Quedan ordenados los demandados a desalojar las propiedades en cuestion y a pagar las costas del juicio de ambas instancias.” (Record, p. 59.) ‘

A reconsideration of this decision hating been denied, the Bautistas filed the petition for certiorari and mandamus now under consideration. They claim that the court of first instance had no appellate jurisdiction to decide the case on the merits, because the municipal court had no jurisdiction to entertain the same, the issue of possession involved therein being dependent upon the question of title to the immovable property in litigation, which was raised in their answer. This pretense was not sustained by respondent judge, upon the ground that “la defensa de los demandados, de que el convenio era una simple hipoteca entre ellos, \* \* \* es inmaterial en la presente causa, habiendo habido un convenio formal de pagar los alquileres a los demandantes.” However, if, as contended by the Bautistas, the parties to the deed above referred to merely intended to constitute a mortgage, not to make a conditional sale, with a contract of lease, as said instrument purports to be, then the stipulation contained therein relative to said lease and to the payment of rentals must have been devised solely for the purpose of cloaking the payment of interest. Hence, said defense was very material to the rights of possession, which is the gist of the case.

Respondent Judge, likewise, held that said defense of the petitioners herein is barred by the fact that Civil Case No. 12803 of the Court of First Instance of Manila—in which the Bautistas sought a declarator that the contract in question was not a conditional sale,

but a loan guaranteed by a mortgage—was dismissed on August 15, 1951, for failure of the Bautistas to appear in the date set for the hearing thereof. This conclusion is well taken for the order of dismissal was unqualified and, hence, it constituted “an adjudication upon the merits,” and, a final determination adverse to the aforesaid pretense of the Bautistas, as plaintiffs in said case No. 12803 and as defendants in case No. 13306 (section 4, Rule 30, Rules of Court).

Although the Court of First Instance had no *appellate* jurisdiction to decide the ejectment case on the merits, inasmuch as the municipal court had no *original* jurisdiction over said case, in view of the question of title to real property, upon which the right of possession was dependent (Pedro Teodoro vs. Agapito Balatbat et al.<sup>[\*]</sup> G. R.

No. L-6314, decided on January 22, 1954) said court of first instance had original jurisdiction to pass upon such issue. What is more, it did exercise its original jurisdiction without any objection on the part of the Bautistas. Indeed, in their motion for reconsideration dated March 1, 1952, the latter merely assailed the *accuracy* of the findings of the court of first instance on the merits of the case, thus clearly accepting and, even, invoking the jurisdiction of the court to pass upon the same. The Bautistas did not question said jurisdiction until March 12, 1952, when they filed a pleading entitled “additional ground for the reconsideration of the decision of the Court”, alleging, for the *first* time, that the “Court had no jurisdiction to try the case on the merits”. It was, however, too late to raise this issue, for the court had *original* jurisdiction over the case and had exercised it with the implied consent of the Bautistas (Amor vs. Gonzales, 42 Off. Gaz., [No. 12] p. 3203, 76 Phil., 481; Zapanta vs. Bartolome, et al., CA-G. R. No. 2592, April 27, 1949, 46 Off. Gaz. [11] 5447). As provided in section li; Rule 40, of the Rules of Court:

“A case tried by an inferior court without jurisdiction over the subject-matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their

pleadings and go to the trial without any objection to such jurisdiction.”

In view of the foregoing, the petition is hereby denied and the case dismissed, with costs against the petitioners.

*Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo and Reyes, J.B.L., JJ., concur.*

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<sup>[\*]</sup> 94 Phil., 247.

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