96 Phil. 538

[G.R. No. L-5910. February 08, 1955]

DOMINGA DE SANTOS, PLAINTIFF AND APPELLANT, VS. ANDRES VIVAS, ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

PARAS, C.J.:

On November 15, 1950, the plaintiff, Dominga de Santos , filed in the Justice of the Peace Court of Digos, Davao, a complaint against the defendants, Andres Vivas and Anastacio Lastimosa, in substance alleging that in or about December, 1948, a contract was entered into between them whereby the defendants were to work as tenants, on share basis, on a portion of plaintiff's parcel of land situated in the barrio of Odaka, municipality of Digos, province of Davao, each to cultivate one and one-half hectares; that although the defendants were able to harvest some 30 piculs or cavanes each, they failed and have refused to deliver to the plaintiff the latter's share in said harvest, or 10 cavanes from each of the defendants , in violation of their contract; and praying that the defendants be,ordered to vacate the land in question, to deliver to the plaintiff her share in the crops harvested by them or the value thereof, and to pay to the plaintiff the sum of P200 as damages and P150 as attorney's fees. The defendants filed a motion to dismiss the complaint for lack of jurisdiction, because there was no allegation in the complaint that a previous demand was made by the plaintiff upon the defendants for the latter to vacate in accordance with section 2, Rule 72, of the Rules of Court. This motion was denied and, after trial, judgment was rendered against defendants by the justice of the peace court, from which the defendant appealed to the Court of First Instance of Davao. In the latter court the original complaint was reproduced and the defendants again filed a motion to dismiss, reiterating the ground already invoked in the justice of the peace court, and contending that, as the latter court did not acquire any jurisdiction over the case, the Court of First

Instance could not acquire appellate jurisdiction. After hearing, the Court of First Instance of Davao issued an order dated February 7, 1952, dismissing the complaint. From this order the present appeal was taken by the plaintiff.

Section 2 of Rule 72 provides that "No landlord, or his legal representative or assign, shall bring such action against a tenant for failure to pay rent due or to comply with the conditions of his lease, unless the tenant shall have failed to pay such rent or comply with such conditions for a period of fifteen days, or five days in the case of building, after demand therefor, made upon him personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no persons be found thereon."A demand to vacate is indispensable in order to determine whether the tenant's possession has become illegal and the complaint is filed within one year after said demand. Former Chief Justice Moran commented that such demand is jurisdictional, and if none is made, the case falls within the jurisdiction of the Court of First Instance. Moran, Comments on the Rules of Court, 1952 ed., Vol. 2, pp. 310-311.)

The appellant, however, cites Co Tiamco *vs*. Diaz, 75 Phil., 672, in support of the proposition that "the demand when required to be made by the Rules must be proved but need not be alleged in the complaint." Appellant's citation is not only out of point but also in a way decisive against his position, because it was held therein that referring to section 2 of Rule 72, "it is apparent from this provision that a demand is a pre-requisite to an action for unlawful detainer, when the action is 'for failure to pay rent due or to comply with the conditions of his lease, and not where the action is to terminate the lease because of the expiration of its term. This ruling 13 in all fours with the present appeal, in which the ground for the alleged illegal Retainer is a violation of the tenancy, and not the expiration of the term of the lease which was involved in the case of Co Tiamco *vs*. Diaz.

Another ground, equally fatal to the appellant, is that, as the complaint unquestionably refers to an agricultural tenancy case, it fell under the jurisdiction of and should have been brought before the Court of Industrial Relations. Wherefore, the appealed order is affirmed, and it is so ordered, with costs against the plaintiff.

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

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