

PILAR DOMINGO VDA. DE BUHAY, PLAINTIFF AND APPELLEE, VS. CARMEN COBARRUBIAS, DEFENDANT AND APPELLANT.

G.R. No. L-43. February 27, 1946

Ponente: OZAETA, J.

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OZAETA, J.:

This is an appeal from a judgment of the Court of First Instance of Manila, ordering the defendant to vacate the upper part of the house located at 563 Legarda, Manila, and to pay to the plaintiff the rents, from February 1945 until the premises are vacated, at the rate of P27.50 a month, and the costs.

For some years previous to 1945 the defendant had been occupying the premises in question, paying a monthly rent therefor to the plaintiff and her predecessors in interest. On February 8, 1945, the plaintiff, having lost her residence on Soler street, notified the defendant to vacate the said premises. The defendant not only failed and refused to do so but likewise failed to pay the rents for the months of February and March 1945, for which reasons the plaintiff commenced in the Municipal Court of Manila this action, which in the course of time was appealed to the Court of First Instance, with the result already indicated above.

In her first assignment of error the appellant invokes article 1566 of the Civil Code, which reads as follows:

"Art. 1566. If, on the expiration of the contract, the lessee, with the acquiescence of the lessor, continues for fifteen days to enjoy the thing leased, it shall be deemed that there has been an implied renewal for the time mentioned in Articles 1577 and 1581, unless notice to vacate has previously been given."

Appellant's argument is that she having been permitted by the appellee to occupy the premises in question during the months of February and March, there was an implied renewal of the contract under the article above quoted. This contention is clearly untenable. Under article 1581 of the Civil Code, in the absence of an agreement as to the duration of the lease it is understood as being from month to month when the rent is on a monthly basis, and "the lease shall terminate without necessity of a special notice, upon the expiration of the term." (*Estrella vs. Sangalang*, p. 108, ante.) Moreover, the trial court found, and we find no basis in the record upon which to reverse its finding, that on February 8 the plaintiff, "braving the perils incident to the war," went to the defendant and told her to pay the rent for that month and vacate the premises. There is therefore the additional consideration in this case that the plaintiff had given the defendant notice to vacate before commencing the action. Furthermore, the defendant admits having failed to pay the rents corresponding to February and March 1945. Hence plaintiff's right to eject the defendant is indisputable.

In her second assignment of error the defendant and appellant contends that the trial court should have held that under the circumstances of emergency and as a matter of equity she cannot be deprived of the possession of the leased premises. A similar contention was advanced by the appellant and rejected by this Court in the case of *Philippine Sugar Estates Development Co. vs. Prudencio*, (p. 111, ante). In the instant case the defendant has been unlawfully withholding from the plaintiff the possession of the premises in question for more than a year; and the plaintiff pleads before us that she was compelled to bring the present action not so much to collect the rent as to

acquire a place where she and her nine children could live, "they being victims of the general conflagration occasioned by the Japanese armed forces upon the liberation of Manila," and that "the said appellee is a widow who, but for the accommodation extended to her by her sister-in-law, with her nine children would be sleeping in the streets."

The judgment is affirmed, with costs.

De Joya, Perfecto, Hilado, and Bengzon, JJ., concur.

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