

JESUS DAYAO, PETITIONER, VS. SHELL COMPANY OF THE PHILIPPINES, LTD. AND HON. WALFRIDO DE LOS ANGELES, AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH IV, QUEZ...

G.R. No. L-32475. April 30, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This special civil action for Certiorari and Prohibition with Preliminary Injunction seeks to nullify the Orders of respondent Judge dated March 30, 1968, admitting private respondent's Amended Complaint, and that of April 1, 1968, granting the issuance of a Writ of Preliminary Mandatory Injunction.

In its original Complaint for Ejectment filed against petitioner (defendant in the case below) before the City Court of Quezon City, Branch IV, on October 10, 1966, SHELL Company of the Philippines, as plaintiff therein, alleged that it is a foreign corporation duly licensed to do business in the Philippines; that it is a lessee of a parcel of land situated at the corner of Aurora Boulevard Extension and Illinois Street, Quezon City; that it had sub-leased the same to petitioner together with the gasoline service station building, equipments and other improvements thereon for an indefinite period until terminated by either party upon written ninety days notice; that on June 20, 1966, it notified petitioner in writing of the termination of the sub-lease agreement but that notwithstanding the lapse of the 90-day period on September 20, 1966 and despite re-peated demands, petitioner failed and refused to vacate. No copy of the sub-lease contract is attached to the rollo.

In his Amended Answer, petitioner (as defendant in the Ejectment suit) contended that under their Sub-lease and Dealership Agreement, termination would occur only should any of the parties violate any of the terms and conditions thereof; that the Complaint does not allege that he had violated any of the terms and conditions of their agreement, hence, SHELL had no cause of action against him; that he has been up-to-date in the payment of his obligations; that the true reason behind the action for Ejectment was his failure to meet his quota for the purchase of gaso-line; that he had invested no less than P25,000.00 in the gasoline station, and if ejected, he would suffer great damage. He then prayed for moral damages of P5,000.00, P1,000.00 for attorney's fees and costs.

At the trial before the City Court, SHELL intro-duced testimony to the effect that petitioner had violated the terms of their contract in that he bought gasoline and other gasoline products from sources other than SHELL's; that he used the service station for storage of cement and other cement products; and that he failed to maintain the station premises according to the standards called for under the dealership agree-ment.

Notwithstanding petitioner's vigorous objection to the admission of the foregoing testimony, he presented counter evidence to show that SHELL had never charged him with violation of any of the provisions of the contract such as the keeping of the premises in a dilapidated condition and the usage of the gasoline station for storage purposes; that petitioner's notice of termination was less than one month, in violation of the 90-day period stipulated in the contract; and that the cancellation of the contract was really moti-vated by his unsatisfactory

sales.

After trial on the merits, the City Court rendered a Decision on November 7, 1967 dismissing SHELL's Complaint. The dispositive portion of said judgment reads:

"In view, hereof, there being no justifiable cause to eject the defendant within the cause of action put up by the plaintiff in its complaint, this case is hereby ordered dismissed and the plaintiff is hereby ordered to pay attorney's fees to the defendant in the amount of P300.00. The Court finds no cause for rendering judgment for moral damages."

Dissatisfied, SHELL appealed to the Court of First Instance of Rizal, Quezon City, Branch IV (CC No. Q-11921) on January 16, 1968.

Before said Court, SHELL filed a Motion to Admit Amended Complaint for the purpose of "tendering the real issues in the case"[1] SHELL also filed a Motion for Issuance of Writ of Preliminary Mandatory Injunction to Restore Plaintiff (SHELL) in Possession.[2] Petitioner opposed both Motions.[3]

On March 30, 1968, respondent Judge issued the challenged Order admitting the Amended Complaint and granting petitioner ten (10) days, if he so elects, to file an Answer. On April 1, 1968, he also authorized the turn-over of possession to SHELL through the issuance of a Writ of Preliminary Mandatory Injunction upon SHELL's filing of a bond in the amount of P5,000.00 to answer for damages which may be suffered by petitioner. This is the other Order impugned herein.

On April 15, 1968, petitioner filed a Motion for Reconsideration,[4] and on April 18, 1968, a Motion to Dissolve Writ of Preliminary Mandatory Injunction.[5] SHELL claimed that it had not been furnished with copies of these Motions and, apparently, the Court of First Instance had not acted on them. On September 19, 1969, or approximately a year and a half after the issuance of the challenged Orders, petitioner, through another counsel, filed an Urgent Motion for Reconsideration of both the aforesaid Orders, upon the allegation that the transfer of possession to SHELL was working to petitioner's great prejudice.[6] Reconsideration was denied by respondent Judge on December 18, 1969.[7]

Hence, this Petition for Certiorari and Prohibition filed on August 31, 1970, which this Court required SHELL to answer.[8] On September 29, 1970, upon petitioner's motion, we enjoined respondent Judge from proceeding with the hearing of the case below.[9] The prayer for a Writ of Preliminary Mandatory Injunction to restore to petitioner possession of the service station was set for hearing, together with the main case, which hearing, however, did not materialize as the parties opted to submit Memoranda in lieu of oral argument.[10]

In this Petition, it is alleged that respondent Judge acted without or in excess of jurisdiction or with grave abuse of discretion in admitting SHELL's Amended Complaint and in issuing a Writ of Preliminary Mandatory Injunction placing SHELL in possession of the litigated premises. The following queries have been posed:

- Can the respondent Shell Company of the Philippines Ltd. whose complaint for ejectment (unlawful detainer) was dismissed by the City Court of Quezon City amend its complaint on appeal to the Court of First Instance of Rizal?
- Can the respondent Hon. Judge Walfrido de los Angeles issue a writ of preliminary mandatory injunction in the unlawful detainer case so as to deprive petitioner of his possession of the Shell Service Station?

I

Petitioner contends that the Amended Complaint was based on new causes of action as shown by the following amendments to the original Complaint.

"3. On March 15, 1965, plaintiff as lessee of a parcel of land situated at the corner of Aurora Boulevard Extension and Illinois Streets, Quezon City, sub-leased the same to the defendant together with the gasoline service station building, equipments and other improvements thereon for an indefinite period until terminated by either party upon written ninety days notice of termination, or until terminated by the plaintiff without such nine-ty (90) days notice in the event of violation of the terms and conditions of the sublease agreement;

"4. Defendant, in violation of the sub-lease agreement, kept the gasoline service station under dilapidated con-ditions, purchased petroleum products from sources other than plaintiff and used the premises for the storage of cement and hollow blocks.

x x x x x

"6. Notwithstanding the lapse of the ninety (90) day period on September 20, 1966 or lapse of a shorter period in view of the violation of the terms and conditions of the Sublease Agreement and despite repeated demands, defendant failed and refused to vacate the premises.

"7. Under the terms of the Sublease Agreement, the fair rental value of the property covered by the sub-lease is P580.73 per month. In the event of failure of the sub-lessee to surrender possession of the premises despite the lapse of the ninety (90) day period or shorter period in case of violation of the terms and conditions of the Sublease Agreement, he is bound to pay monthly rental in the amount of P580.73 from the expiration of aforesaid period until the surrender of premises to the plaintiff."[11]

These causes of action, petitioner claims, were not pleaded at all in the original Complaint, so that SHELL had changed its theory on appeal, which is impermissible. In refutation, SHELL countered that at the trial it presented proof of violation by peti-tioner of their agreement, and that the latter, in turn, refuted such evidence.

The original Complaint in the City Court does show that SHELL's cause of action was predicated on petitioner's failure to vacate the premises after the lapse of the ninety day notice of termination. In the Amended Complaint, SHELL added petitioner's failure to comply with the terms and conditions of the Sublease and Dealer Agreement. However, the Decision of the City Court discloses that even during the trial there-at SHELL introduced evidence substantiating the alleged violation by petitioner of the terms of their agree-ment. Petitioner objected to its presentation, but nonetheless introduced proof in contra. On this score, the City Court had this to say:

"Defendant through counsel vigorously objected to the ad-mission of any evidence regard-ing the matter of having illegally purchased gasoline and gasoline products from other sources, the matter of utilizing the Shell station for storage of cement and other cement products and keeping it in substandard condition because these matters are not alleged in the complaint." x x x x

The Court is aware that the pre-sentation of the evidence on these issues objected to by the defendant during the actual hear-ing somehow prejudiced the de-fendant in maintaining his de-fense upon the merits. But these issues were met ably by the de-fendant when he presented his defense."[12]

Under the foregoing circumstances, it cannot be successfully argued that respondent Judge gravely abused his discretion when he admitted the Amended Complaint during the pendency of the appeal. Section 5, Rule 10 of the Rules of Court allows amendments of pleadings to conform to the evidence presented, to be treated in all respects as if they had been raised in the pleadings, at any time, even after judgment. Thus:

"SEC. 5. Amendment to conform to or authorize presentation of evidence. --

"When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subverted thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

Pursuant to the foregoing provision and in view of the evidence pro and contra submitted by the parties, the issue of violation of the terms and conditions of the Agreement may be said to have been tried with the express consent of the parties. In fact, the City Court could have required the amendment of the pleadings even while the case was pending before it.

And although SHELL filed its Motion to Admit Amended Complaint only when the case was already on appeal in the Court of First Instance, the amendments introduced did not raise questions for the first time on appeal so that no unfairness has resulted to petitioner.[13] The purpose behind the submittal of the amendments was in order to make the pleadings conform to the evidence presented before the City Court. Amendments to conform to the proofs may be made on or after trial, after entry of judgment, and even while the case is pending on appeal.[14] The questions on appeal would not have been essentially distinct from those litigated upon by the parties before the Court of origin.[15] Besides, it should be recalled that since the appeal herein was interposed before the City Court became a Court of record, appeal had to proceed by trial de novo before the Court of First Instance.

Furthermore, under Article 1673 of the Civil Code, a lessor may judicially eject a lessee for violation of any of the conditions agreed upon on the contract. A lessor is not in law required to bring first an action for rescission but could ask the Court to do so and simultaneously seek the ejection of the lessee in a single action for illegal detainer.[16] When SHELL, therefore, added instances of violation of the contract in its Amended Complaint, it did so merely in amplification of its action for ejectment.

II

We come now to the issue of propriety of the issuance of the Writ of Preliminary Mandatory Injunction.

Petitioner argues that such a Writ can only be issued in cases of Forcible Entry, whereas the case below is actually one for Unlawful Detainer. Petitioner relies on section 3, Rule 70 of the Rules of Court taken from Article 539 of the Civil Code. To quote:

"Sec. 3. Preliminary injunction. -- The court may grant preliminary injunction, in accordance with the provisions of Rule 58 hereof, to prevent the defendant from committing further acts of dispossession against the plaintiff.

"A possessor deprived of his possession through forcible entry may within ten (10) days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof." (Underscoring supplied by petitioner).

"Art. 539.

"x x x x x x x x

"A possessor deprived of his possession through forcible entry may within ten days from the filing of the

complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession." x x x x

Petitioner then concludes that the statute does not confer jurisdiction on the Court to grant a preliminary injunction in an Unlawful Detainer case, citing principally *Piit vs. de Lara and Velez*, 58 Phil. 765, 766-767 (1933), and *Sevilla vs. de los Santos, et al.*, 83 Phil. 686 (1949).

On the other hand, SHELL avers that the Writ of Preliminary Mandatory Injunction is based not on the aforementioned section 3, Rule 70, but on section 9 of the same Rule and on Article 1674 of the Civil Code, providing thus:

"Sec. 9. Mandatory injunction in case of appeal. -- Upon motion of the lessor, within ten (10) days from the perfection of the appeal to the Court of First Instance, the latter may issue a writ of preliminary mandatory injunction to restore the lessor in possession if the court is satisfied that the lessee's appeal is frivolous or dilatory, or that the appeal of the lessor is *prima facie* meritorious." (Underscoring by SHELL)

"Art. 1674. In ejectment cases where an appeal is taken, the remedy granted in Article 539, second paragraph, shall also apply, if the higher court is satisfied that the lessee's appeal is frivolous or dilatory, or that the lessor's appeal is *prima facie* meritorious. The period of ten days referred to in said article shall be counted from the time the appeal is perfected." (Italics by SHELL).

We agree with SHELL that it is the foregoing provisions which are applicable to the case at bar there being a pre-existing relationship of lessor and lessee between the parties. Article 539, paragraph 2 of the Civil Code refers to the issuance of the Writ of Preliminary Mandatory Injunction in Forcible Entry cases in the original Court while Article 1674 applies the same remedy in unlawful detainer or ejectment cases in the appellate Court,[17] which is precisely the situation that confronts us here. The ruling laid down in *Piit vs. De Lara & Velez* (which held that a Justice of the Peace Court cannot issue a Writ of Preliminary Injunction in Unlawful Detainer cases) has not been superseded. In fact, said ruling was also up-held in *Dikit vs. Ycasiano*, 89 Phil. 45 (1951). The case of *Sevilla vs. de los Santos* (holding that when the action is one for Unlawful Detainer originating from a Justice of the Peace Court and retaining the same nature during the pendency of the appeal in the Court of First Instance, the issuance of preliminary injunction by the latter Court is improper) appears to be contrary to Article 1674 and Section 9 of Rule 70.

Article 1674 of the Civil Code was designed "to put an end to the present state of the law which unjustly allows the lessee to continue in possession during an appeal".[18] It provides for an additional ground for execution before final judgment. It authorizes the issuance of a Writ of Preliminary Mandatory Injunction where a lessor's appeal is *prima facie* meritorious.

In his assessment of SHELL's appeal before him, respondent Judge found it *prima facie* meritorious and issued the Writ of Preliminary Mandatory Injunction. He acted well within the purview of Article 1674 of the Civil Code, *supra*, and cannot be said to have committed grave abuse of discretion. If at all, he committed an error of judgment, which may be offset by the bond posted by SHELL to answer for damages that may be suffered by petitioner should it be finally decided that SHELL was not entitled thereto.

WHEREFORE, the Writ of Certiorari prayed for is denied, and this case hereby remanded to respondent Court for the determination of the appeal on the merits and rendition of the corresponding judgment.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

[1] Annex "G", pp. 45-49, Rollo.

[2] Annex "I", pp. 54-56, Ibid.

[3] Annexes "H", pp. 50-53, & "J", pp. 57-62, Ibid.

[4] Annex "O", pp. 74-77, Ibid.

[5] Annex "N", pp. 70-72, Ibid.

[6] Annex "P", pp. 78-94, Ibid.

[7] Annex "Q", p. 95, Ibid.

[8] p. 97, Rollo.

[9] p. 112, Ibid.

[10] Pp. 144 & 146, Ibid.

[11] Pp. 1 & 2, Amended Complaint, pp. 47-48, Rollo.

[12] Annex "D", pp. 34-35, Rollo.

[13] vide, Central Bank of the Phil. vs. CA, 63 SCRA 431 (1975).

[14] Jalandoni vs. Ledesma, et al., L-42589, Aug. 31, 1937 & Oct. 29, 1937 (unpublished), 64 Phil. 1061 (1937).

[15] See Lianga Timber Co., Inc., 76 SCRA 197 (1977).

[16] Pamintuan vs. Tiglao, 53 Phil. 1, cited in Puahay Lao vs. Suarez, 22 SCRA 215 (1968).

[17] Paras, Civil Code Annotated, Vol. II, p. 367 1971 ed.; Vol. V, p. 304, 1972 ed.

[18] Report of the Code Commission, p. 143.

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