

CATALINA BARDELAS, TOMAS NAZARIE, JULIANA DOMINGO, JOSE ENCABO, SERAPIO GARCIA, JUAN JAVIER, JOSE MALLARI, SOTERO MONTOYA, EMILIA OLATAN, SESINANDO PAMARAN, ARSENIO SAN PEDRO, H...

G.R. No. L-38467. June 28, 1974

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

This case was certified to this Court by the Court of Appeals in its Resolution of March 13, 1974, holding that jurisdiction over the petitioners' appeal thereto pertains to the Supreme Court, no issue of fact but purely of law being raised therein. By Resolution dated March 27, 1974, this Court accepted and docketed the case as G.R. No. L-38467, and we now proceed to decide the same.

Briefly the facts of this case are as follows:

On August 31, 1970, private respondent herein, Mrs. Paz Basa Andres, and one Idelfonso Borbon filed in the Municipal Court of Las Piñas, Rizal, an action for ejectment with damages against petitioners Catalina Bardelas, Tomas Nazarie, Juliana Domingo, Jose Encabo, Serapio Garcia, Juan Javier, Jose Mallari, Sotero Montoya, Emilia Olatan, Sesinando Pamaran, Arsenio San Pedro, Hilaria Tobias, Modesto Camino, Juan Umakyat, with all their respective families and John Does (Civil Case No. 370). The action was founded on failure of the defendants to pay rentals for the parcels of land leased by them from the plaintiffs.

On September 15, 1970, the defendants through Atty. Justo I. Ibay filed a motion to dismiss the complaint on the following grounds:

"I. That the present action is already barred under Republic Act No. 267, as amended by Republic Act No. 498, in relation to, and as already implemented by, Resolution No. 48, dated July 23, 1970 of the Municipal Council of Las Piñas, Rizal, and other subsequent acts of the municipality of Las Piñas;

II. That the fourteen (14) defendants specifically mentioned in the complaint by their respective names are neither the trustees of an express trust, guardians, executors, administrators, agents, or parties authorized by statute who may be sued for the benefits, nor are they acting under the name, of the 'John Does' sued but not named and summoned although sought to be bound by whatever judgment which this Honorable Court may render for or against the said fourteen (14) specifically named defendants;

III. That the fourteen (14) defendants specifically mentioned in the complaint by their respective names are neither persons in common or general interest as among themselves in the subject matter of the suit nor are they privies to one another in any contract as against the plaintiffs."

On September 16, 1970, defendant Jose Encabo filed through Atty. Gelasio L. Dimaano a separate motion to dismiss on the grounds (1) that plaintiff has no legal capacity to sue; and (2) that complaint states no cause of action.

After hearing of the motions to dismiss, and considering the plaintiffs' opposition thereto as well as the rejoinder and reply to the same, the Municipal Court of Las Piñas denied both motions for lack of merit. Idelfonso Borbon, not being an attorney-in-fact of the plaintiff, was ordered dropped from the case for lack of personality to sue and be sued. The defendants having been ordered to answer the complaint within five (5) days from notice of the order of denial, defendants filed their answers through their respective counsel.

On August 10, 1971, the defendants through counsel filed with the Municipal Court of Las Piñas a Memorandum with Motion, stating in substance that the case is governed by Republic Act No. 6126 which prohibits for one year from March 31, 1970, the increase in the monthly rental agreed upon between lessor and lessee for lands and buildings for dwelling purposes where such rental does not exceed P300.00 a month, and prohibiting ejectment of the tenants therefrom for a period of two years from the effectivity of said Act, and they reiterated the motion to dismiss the complaint.

After hearing the motions to dismiss, the oppositions thereto and the rejoinder to the opposition, the Municipal Court of Las Piñas, Rizal, denied the same and set the hearing of the case on the merits for October 25, 1971. The motions to reconsider the order of dismissal having been denied, the defendants filed a petition for certiorari, mandamus and prohibition, with prayer for a writ of preliminary injunction, with the Court of First Instance of Rizal, Branch II, against the Municipal Judge of Las Piñas and the plaintiff, Paz Basa Andres (Civil Case No. 15532). Instead of filing an answer to the petition, respondents Municipal Judge of Las Piñas and Paz Basa Andres filed a motion to dismiss the petition. The motion was objected to by the petitioners, but in its order of April 7, 1972, the Court of First Instance of Rizal, Branch II, dismissed the petition and lifted the restraining order it previously issued on January 10, 1972. From this order of dismissal, petitioners appealed to the Court of Appeals (CA-G.R. No. 50566-R) where they assigned as errors of the Court of First Instance the following:

- "I. In considering evidentiary matters in dismissing the petition on private respondents' motion to dismiss;
- II. In entertaining a motion to dismiss based on grounds other than those provided for in Section 1, Rule 16 of the Revised Rules of Court.
- III. In dismissing the petition without any hearing on the merits."

The sole issue presented for determination in this case is whether the Court of First Instance of Rizal acted with grave abuse of discretion in dismissing the petition on the basis of the pleadings filed by both parties in Civil Case No. 15532 for certiorari, mandamus and prohibition, with prayer for writ of preliminary injunction, entitled "Catalina Bardelas et al vs. Honorable Antonio Rodriguez et al".

The appeal should be dismissed for lack of merit. The Court of First Instance of Rizal, Branch II, acted in the exercise of sound discretion when it dismissed the petition in Civil Case No. 15532, the dismissal thereof being founded on lack of cause of action for the petition. It should be noted that the action originally instituted in the Municipal Court of Las Piñas, Rizal, is one for ejectment which is primarily based on prior physical possession by the plaintiff of the realty involved. One who seeks to eject a usurper or intruder from a parcel of land or building, or who detains the same after termination of the right to possession, need not show that he is the owner, provided he is lawfully in possession. Paz Basa Andres appears from the record not only as possessor but also as owner of the land in dispute (See Transfer Certificate of Title No. 346670 in the name of Paz Basa Andres). As owner and possessor she has a perfect right to file an action for ejectment against the petitioners herein who were alleged to be unlawfully occupying the land in question by not paying the stipulated rentals. That her husband was not joined as party plaintiff is not fatal to the action for ejectment since the said land is not conjugal but her separate property, as shown by the decision of the Court of First Instance of Rizal, Pasay City Branch, based on a compromise agreement dated October 18, 1971, in its Civil Case No. 718-R for partition. Under the said

agreement the property involved was adjudicated to respondent Paz Basa Andres as her share of the property of her deceased father, Don Ramon Basa, Sr. Evidence as to the ownership of this land was not even necessary to be introduced in the ejectment case which does not involve title thereto but merely possession thereof which, as alleged in the complaint, was enjoyed by private respondent Paz Basa Andres but unlawfully withheld from her by the petitioners herein.

The provisions of Republic Act No. 6126 invoked by the petitioners are not applicable. This is not a case falling under Article 1673, paragraph (1), of the Civil Code, in relation to Section 4 of said Act, as amended, which suspends for two years the ejectment of a tenant by reason of the expiration of the period of lease agreed upon, or when the lease is of fixed duration as determined by Article 1682 and 1687 of the Civil Code, i. e. that the lease shall be for such time as shall be necessary for the gathering of fruits which the whole estate may yield for one year, or which it may yield once only although two or more years may elapse for the purpose; or when it is yearly, monthly or daily, in which case the expiration thereof cannot be the basis for ejectment provided the lessee is willing to pay the unincreased rentals. This is simply a case of failure of the tenants to pay the rentals agreed upon, which was not increased in violation of Republic Act No. 6126, and, therefore, a valid ground for ejectment under paragraph (2) of Article 1673, and not for suspension thereof under Section 4 of Republic Act No. 6126, as amended.

Nor are the provisions of Republic Act No. 267, as amended by Republic Act No. 498, controlling, since the Municipality of Las Piñas has not actually instituted expropriation proceedings for the acquisition of the land in question for subdivision and resale to occupants, in which case suspension of ejectment of the occupants does not apply.

WHEREFORE, finding no merit in the appeal interposed by the petitioners from the order of the Court of First Instance of Rizal dismissing their petition for certiorari, mandamus and prohibition, the appeal is hereby dismissed with costs against appellants.

The writ of preliminary injunction issued by the Court of Appeals on October 9, 1972, against the respondents-appellees enjoining and restraining them from further proceeding with the hearing of Civil Case No. 370 of the Municipal Court of Las Piñas, Rizal, is hereby dissolved.

SO ORDERED.

Makalintal, C.J., Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

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