

LUCIO DIMAYUGA, PLAINTIFF AND APPELLEE, VS. ANTONIO J. DIMAYUGA, DEFENDANT AND APPELLANT.

G.R. No. L-6740. April 29, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On March 20, 1952, plaintiff filed an action in the Court of First Instance of Batangas against defendant praying that the latter be ordered to deliver to the former the possession of a parcel of land situated in barrio San Roque, Sto. Tomas, Batangas, and to pay as damages the following items: P300 a month from November 12, 1951, should he fail to deliver the possession of the land; P99 for the galvanized iron sheets taken by defendant; P250 for trees allegedly cut; and P2,000 for moral damages, plus the costs of action.

On April 8, 1952, defendant filed a motion to dismiss based on the ground that the complaint does not state a cause of action, to which plaintiff filed a written opposition. The motion was denied on April 21, 1952. On May 3, defendant filed a second motion to dismiss practically based on the same ground, and on May 19, the motion, was denied. On May 23, defendant filed an answer. Upon plaintiff's motion, the court admitted the second amended complaint filed by him in its order of July 7. On July 25, defendant filed a motion to dismiss the amended complaint based on the same grounds upon which he predicated his two previous motion to dismiss. The court again denied his third motion to dismiss in its order of August 1, 1952.

The case was set for hearing on August 13, 1952 and on August 9, defendant filed a motion to postpone the hearing on the ground that he, or his counsel, needed time to prepare his "responsive pleading." No action was taken on this motion, and, when the date for hearing came, the court denied the motion and ordered plaintiff to present his evidence. Neither defendant, nor his counsel, appeared. On August 14, 1952, the court rendered judgment as prayed for in the complaint, whereupon the defendant interposed the present appeal.

In this appeal, appellant pretends that the lower court erred: (1) in not dismissing the complaint for want of cause of action, or for being premature; (2) in not granting his petition for ocular inspection to better appreciate the merits of his petition to dismiss; and (3) in not granting his petition for postponement of the hearing of the case set for August 13, 1952.

The motion to dismiss filed by appellant is mainly predicated on the ground that the complaint does not state a cause of action for the reason that the period stipulated in the contract of lease on which plaintiff bases his right of possession has not yet expired in view of a condition therein contained. This condition recites that if at the expiration of the contract there should exist on the land some sugar cane to be cut it shall be understood as extended until after the cane had been cut.^[1] It is contended that there was still some standing sugar crop upon the expiration of the ten-year period agreed upon in the contract and, hence, the same cannot be deemed to have expired when this action was instituted. This claim is disputed by the appellee who reasons out that the same does not appear in the complaint.

The ground for dismissal being that the complaint does not state a cause of action, the facts that may be

considered to test its sufficiency are only those alleged therein, and no other, and it appearing in the complaint that the contract of lease is for a term of ten years from November 12, 1941 and that said term had expired on November 12, 1951, without being renewed or extended, the appellee contends that his right to possess the land has already accrued.

The claim of appellee is well taken. When the ground for dismissal is that the complaint states no cause of action, the rule provides that its sufficiency can only be determined by considering the facts alleged in the complaint, and no other. "It has been said that the test of the sufficiency of the facts alleged in a petition, to constitute a cause of action, is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the petition. [*Paminsan vs. Costales*, 28 Phil., 487, 489; *Blay vs. Batangas Transportation Co.*,[*] 45 Off. Gaz., (Supp. to No. 9) 1.] * * * If the court finds the allegations to be sufficient but doubts their veracity, it must deny the motion to dismiss and require the defendant to answer and then proceed to try the case on the merits (*Pinero vs. Enriquez*, 84 Phil., 774)." (See *Moran*, Comments on the Rules of Court, Vol. I, 1952 ed., p. 170.) Such is what the trial court did. It tested the sufficiency of the complaint by considering its factual allegations and found them to be sufficient to constitute a cause of action. We find no error in this respect.

It is true that the appellant has invoked in his motion to dismiss the condition in the contract of lease to the effect that if at the expiration of said contract there would exist on the land sugar crop to be cut it shall be deemed extended until after the same had been cut, and to substantiate his claim he asked the court that an ocular inspection be made of the property so that it may see for itself the truth of such allegation, but such claim cannot be entertained for the reason that such condition does not appear in the complaint. At best, this is a matter which the appellant could establish by proper evidence when the time for trial comes, and not at this stage of the proceeding. The rule is that, when the motion to dismiss is based on the ground above invoked, no evidence may be allowed and the issue should only be determined in the light of the allegations of the complaint [*Asejo vs. Leonoso*,[**] 44 Off. Gaz. (No. 10) 3807]. The lower court, therefore, did not err in denying the petition for ocular inspection.

Even if we consider the petition on its merits, we doubt if appellant has acted properly considering that, as he claims, he planted the sugar cane in the month of October, 1951 knowing fully well that the contract of lease was to expire on November 12, 1951. If such were allowed we would be placing in the hands of appellant the termination of the lease. The condition regarding implied extension must have been predicated upon the theory that the crop must be planted in its proper season according to the custom or practice of the place and not at the pleasure of the appellant. The planting invoked by appellant cannot therefore be considered as the one contemplated by the parties.

Counsel also claims that the appellant is not the proper party to be sent because the lessee is Prospero Dimayuga who is already dead and appellant is merely the special administrator of his estate. Such allegation is not correct for the complaint states that the appellant is the only son and heir of the deceased and he is being sued in that capacity. He has therefore personality to be sued as party defendant in this jurisdiction. (*Baun vs. Heirs of Baun*, 54 Phil., 65).

The remaining question to be determined refers to the order of the trial court denying the motion of appellant to transfer the hearing of the case upon the ground that he needed more time to present his responsive pleading. It appears that the court set the case for trial on the merits on August 13, 1952, and on August 9, appellant filed his motion for continuance. The court did not act on the motion immediately, but when the date of trial came, neither the appellant nor his counsel appeared. For this reason, the court denied the motion and received the evidence of the appellee. This is now assigned as error on the ground of abuse of discretion.

The matter relative to the postponement of a trial lies generally within the discretion of the court and such discretion should not be interfered with unless a grave abuse of discretion is shown.[2] It has been held that a party moving for postponement should be in court on the day set for trial if the motion is not acted upon favorably before that day. He has no right to rely on the liberality of the court (*Macondray & Co. vs. Paradies*, G. R. No. 38255, September 5, 1933), or on the generosity of the adverse party (*Sunico vs. Villapando*, 14 Phil., 352). In the instant case, the trial court denied the motion for postponement because appellant or his counsel failed to appear and, as the court said, "he has no right to presume that his motion for postponement could be granted." (Order of August 13, 1952.)

Wherefore, the decision appealed from is affirmed.

Pablo, Acting C.J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Judgment affirmed.

[1] This condition reads: "Tambien es condicidn de este contrato la de que si al tiempo de la expiracion de este contrato, o sean a los diez anos exactos, todavia existen en el terreno cañas sin cortar, este contrato se entendera prorrogado hasta despues del corte de dichas cañas."

[*] 80 Phil., 373.

[**] 78 Phil., 467.

[2] *Lichauco vs. Lim*, 6 Phil., 271; *Go Changjo vs. Roldan Sy Changjo*, 18 Phil., 405; *Lino Luna vs. Arcenas*, 34 Phil., 80; *Rivera vs. Ong Che*, 37 Phil., 355; *Babillo vs. Tiongko et al.*, 43 Phil., 317; *Philippine Guaranty Co. vs. Belando*, 53 Phil., 410; *Corp. de PP., Agustinus vs. Del Rey*, 55 Phil., 163; *Lirio vs. Rovira*, 61 Phil., 137.

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