

**ADOLFO RACAZA, PETITIONER, VS. SUSANA REALTY, INC.,
RESPONDENT.***G.R. No. L-20330. December 22, 1966*

Ponente: REGALA, J.

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REGALA, J.:

Petitioner is the lessee of a portion of a piece of land located at San Juan St., Pasay City, and owned by respondent corporation. He started renting this portion of the lot in 1952 when his wife, Evarista P. Racaza, bought an unfinished house that had been built on it. On assurance of respondent that petitioner's family could stay on the land by paying a monthly rent of P15, petitioner finished the construction of the house and he and his family lived in it. On December 16, 1955, however, petitioner was asked to vacate the land because respondent needed it. The demand was followed by the filing on February 10, 1956 of a complaint for ejectment in the Municipal Court of Pasay City. Petitioner and his family remained in the premises as the case was dismissed for failure of respondent to proceed to trial.

On December 17, 1957, petitioner received another letter from respondent demanding anew the surrender of the premises. On February 19, 1958, another ejectment suit was filed against him, the complaint alleging that respondent needed the lot "for the purpose of constructing improvements thereon and for other uses," but that despite repeated demands petitioner refused to leave the premises.

In his answer, petitioner denied that the lease was on a month-to-month basis and claimed that his understanding with respondent was that he would be allowed to stay on the premises as long as he paid a monthly rent of P15. As counterclaim, petitioner demanded the payment of P12,000 which he said he had spent to finish the construction of his house.

After trial, the court ordered petitioner to vacate the premises and pay P15 a month until he had done so, even as it dismissed his counterclaim for lack of merit.

Petitioner appealed to the Court of First Instance of Pasay, reiterating his counterclaim. He asked for the dismissal of the complaint on the ground of lack of jurisdiction of the municipal court to try it, claiming that the complaint was filed more than one year after the alleged unlawful detainer.[1] According to petitioner, the first complaint for ejectment was dismissed on November 23, 1956, while the complaint in this case was not filed until February 19, 1958.

Again, petitioner was ordered evicted; his counterclaim was thrown out for lack of jurisdiction. It was held that petitioner's illegal possession should be deemed to have started on December 17, 1957, when the second demand to vacate was made on him, because the complaint in this case was not intended to revive the one previously dismissed for lack of prosecution. Since the complaint was filed on February 19, 1958, jurisdiction over the case was properly acquired by the municipal court. At the same time, it was held that the counterclaim was correctly dismissed as the amount of the demand (P12,000) was beyond the jurisdiction of the municipal court to grant.

Petitioner asked for a reconsideration and, failing to secure one, appealed to the Court of Appeals. First, he contended that the municipal court did not have jurisdiction because by respondent's own evidence rents had not been paid since July, 1955 and it should be from this date that the one year period should be counted. Second, petitioner claimed that, instead of dismissing his counterclaim, the lower court should have assumed original jurisdiction over it, considering that evidence to support the counterclaim had been allowed without objection from the respondent.

After stating that in actions for unlawful detainer, notice to vacate need not be alleged but may merely be shown by evidence, the appellate court ruled that the one-year period should not be counted from July, 1955 because the parties had stipulated that petitioner was up to date in the payment of rents. Neither should it be reckoned from November 23, 1956[2] when the first demand to vacate was made because it was respondent's privilege, as lessor, to waive the right to bring an action based on the first demand. (*Zobel v. Abreu*, 98 Phil. 343[1956]) Rather, the starting point should be December 17, 1958 when the second demand to quit was made by respondent because, as held in *Cruz v. Atencio*, G. R. No. L-11276, February 28, 1959,

"Where despite the lessee's failure to pay rent after the first demand, the lessor did not choose to bring an action in court but suffered the lessee to continue occupying the land for nearly two years, after which the lessor made a second demand, the one-year period for bringing the detainer case in the justice of the peace court should be counted not from the day the lessee refused the first demand for payment of rent but from the time the second demand for rents and surrender of possession was not complied with."

On this score, the court overruled petitioner's first assignment of error.

But the court found merit in petitioner's other contention that evidence having been admitted without objection from respondent, the Court of First Instance, pursuant to Rule 60, section 11, could take cognizance of the counterclaim in the exercise of its original jurisdiction. Citing article 1678 of the Civil Code, the court held that petitioner should be reimbursed one half of what he had spent in building his house. While petitioner claimed that he had spent P12,000 for the improvement of his house, the appellate court found that the fair market value of the house was P7,000 and, on the basis of this amount, awarded P3,500 to petitioner.

Still not satisfied, petitioner asked the appellate court to reconsider its decision. When his motion was denied, he appealed to this Court.

It is contended that respondent's complaint is defective and did not vest jurisdiction in the municipal court because it does not state the date when the alleged unlawful detainer started so as to afford a basis for determining whether the case was filed within a year from the accrual of the cause of action. In this connection, it is claimed that, according to the evidence, petitioner stopped paying rents in July, 1955 and that it should be from this date that the one-year period should be counted.

To begin with, this case was brought not on the theory that petitioner, as lessee, failed to pay rents, but on the theory that the lease had expired and that respondent had asked petitioner to vacate the land. Thus, the complaint states that respondent needs the land but that despite his demands petitioner refused to vacate it. The averment that the lease was on a month-to-month basis is equivalent to an allegation that the lease expired at the end of every month.[3] It is therefore Immaterial that rents had not been paid since July, 1955, since what made petitioner liable for ejectment was the expiration of the lease. This being the case, demand to vacate was unnecessary. As this Court explained in *Co Tiamco v. Diaz*, 78 Phil. 672 (1946), Rule 70, section 2 requires previous demand only when the action is "for failure to pay rent due or to comply with the conditions of his lease." Where the action is to terminate the lease because of the expiration of its term, no such demand is necessary.[4] In the latter case, upon the expiration of the term of the lease, the landlord may go into the property

and occupy it, and if the lessee refuses to vacate the premises, an action for unlawful detainer may immediately be brought against him even before the expiration of the fifteen or five days provided in Rule 70, section 2.

Accordingly, upon the expiration of the lease in this case, petitioner became a deforciant unlawfully withholding possession of the property. There was no need for a demand to be served on him, except to negate any inference that respondent, as lessor, had agreed to an extension of the term of the lease under article 1687 of the Civil Code.

This brings us to petitioner's next point. As earlier stated, petitioner was twice asked to quit the premises. The first was on December 16, 1955, but as pointed out in the beginning, the complaint filed afterwards was dismissed for non-suit. The second time he was asked to move out was on December 17, 1957, followed by a complaint filed on February 19, 1958. Petitioner insists that respondent's cause of action must be deemed to have accrued on December 16, 1955. But, as already stated, respondent's action is not based on non-payment of rent coupled with a demand; Its action is based on the expiration of the term of the lease and the demand made by it to vacate the premises merely evidences Its determination not to extend the lease. Moreover, even if the action were based on non-payment of rent, the one-year period should be reckoned from the second notice, on the theory that respondent has the right to waive his action based on the first demand and to let the lessee remain in the premises.

Nor is there merit in petitioner's last point that he should have been allowed full reimbursement for what he had spent by applying to this ease article 448 of the Civil Code. It is now settled that article 448, in relation to article 546, applies only to possessors in good faith and since lessees, like petitioner, are not possessors in good faith, because they know that their occupation of the premises continues only during the life of the lease, they cannot recover the value of their improvements from the lessor, much less retain the premises until they are reimbursed. Their rights are governed by article 1678 which allows reimbursement of lessees up to one-half of the value of their useful improvements. (*Lopez, Inc. v. Philippine & Eastern Trading Co.*, 98 Phil. 348 [1956]) The Court of Appeals correctly applied article 1678 to this case.

WHEREFORE, the decision appealed from is affirmed, with costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] Rule 70, sec. 1.

[2] Actually, the first demand was made on December 16, 1955. November 23, 1956 is the date of the order dismissing the first ejectment case.

[3] Civil Code, article 1687.

[4] See Civil Code, articles 1669 and 1687.

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