

SUSANO AMOR, PLAINTIFF AND APPELLEE, VS. ELIZABETH KRUMMER, JOSE CHE KUAK AND FRANCISCO GONZALEZ, DEFENDANTS AND APPELLANTS.*G.R. No. L-90. April 12, 1946*

Ponente: HILADO, J.

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This is an appeal from the judgment of the Court of First Instance of Manila, Branch III, in civil case No.70518 thereof, whereby said court declared defendants Elizabeth Krummer, Jose Che Kuak and Francisco Gonzalez without right to occupy the premises designated as No. 2050 (ground floor), Rizal Avenue, Manila, and ordered them to restore the possession thereof to plaintiff Susano Amor; ordered defendant Elizabeth Krummer and Jose Che Kuak to pay P140 a month from March, 1945 till complete restitution of possession to plaintiff, as "rents" (which sum would be more properly denominated the reasonable value of the use and occupation of the premises per month in view of the absence of a contract of lease between the parties), with legal interest, without prejudice to the right of said defendants to recover from their co-defendant Francisco Gonzalez the "rents" which they had¹ paid him for said premises; ordered the said Francisco Gonzalez to abstain from meddling with the possession and disposition of said premises; and ordered all the defendants to pay the costs in the municipal court, from which the case had been appealed to said court of first instance, and in the latter court.

The case was for ejectment originally filed with the municipal court of Manila. When it was brought on appeal to the court of first instance, only one of the defendants, Francisco Gonzalez, answered the complaint, the other defendants Krummer and Che Kuak having been in due time declared in default, which default the court of first instance refused to lift despite the petition of Atty. R. Gonzalez Lloret, who appeared for the defendants, asking for the lifting of said default, alleging that defendants Krummer and Che Kuak were unable to find their original attorney and had just entrusted him with the case. The court denied the petition for the reason that the ground alleged was at variance with the fact that Atty. Gonzalez Lloret in the notice of appeal appeared as attorney for all the defendants.

The evidence establishes the following facts: that plaintiff is the owner of the premises in question; that in or about March, 1945, plaintiff discovered that defendants Krummer and Che Kuak, without his knowledge nor consent, had leased the said premises from their co-defendant Francisco Gonzalez, for the monthly "rent" of P900, without said Gonzalez possessing any authority from plaintiff either to rent the premises or to collect the rents thereof; that despite plaintiff's notice to vacate served on said defendants Krummer and Che Kuak by plaintiff on March 1, and the latter's demand for the payment of "rents," they have refused and continue to refuse to do so.

Defendant Francisco Gonzalez adduced no evidence. But the court of first instance considered excessive the "rent" of P900 a month and appraised at P140 a month, the reasonable value of the use and occupation of the premises.

Upon the above facts said court rendered the judgment already mentioned at the beginning of this decision. The

contention of counsel for appellant Francisco Gonzalez in his first assignment of error that the municipal court lacked original jurisdiction, and the court of first instance appellate jurisdiction, over the case because the cause of action, according to him, accrued more than one year prior to the commencement of the suit in the municipal court, is untenable. This point was not raised either in the municipal court or in the court of first instance. On the contrary, both parties filed their respective pleadings and proceeded with, the trial of the case on the merits in the court of first instance without any objection to said court's jurisdiction, the contention having been advanced for the first time on this appeal. The cause of action in this case, as established by the evidence, accrued much less than one year before the suit was brought in the municipal court.

Anyway, however, even in case of lack of jurisdiction over the subject matter on the part of an inferior court (such as the municipal court of Manila), under such circumstances as obtain in this case, Rule 40, section 11, provides:

"Lack of jurisdiction.—A case tried by an inferior court without jurisdiction over the subject matter shall be dismissed on appeal by the court of first instance. But instead of dismissing the case the court of first instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction." (*Italics; supplied.*)

Finding the judgment appealed from in accordance with the facts and the law, we affirm the same with the costs in the three instances against the defendant. So ordered.

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

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