

**LIM SR, PLAINTIFF AND APPELLANT VS. ISABELO P. LIM,
DEFENDANT AND APPELLEE.***G.R. No. L-8496. April 25, 1956*

Ponente: LABRADOR, J.

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This is an appeal from a judgment of the Court of First Instance of Manila, dismissing plaintiff's complaint. The facts alleged in the complaint are:

Plaintiff occupies two doors of an accessorial situated on Misericordia Street belonging to the defendant. Plaintiff was an old lessee, and upon the reconstruction of the building defendant allowed him to occupy two doors beginning July 15, 1953, without fixing any definite amount of rent, except that it was to be the same as what other lessees have been paying. In the month of January, 1954, plaintiff proposed to pay P300 for each door, or P600 for both, which is the rent paid by another lessee occupying better quarters, but as defendant could not make up his mind as to the amount of rent, it was agreed" upon between them that plaintiff should deposit the sum of P1,000, which shall be applied for the payment of the rents from the month of January, 1954. From that time on, plaintiff had been offering a monthly rental of P600 for both doors, but defendant refused . to accept this offer. On April 2, 1954, defendant demanded the payment of P700 as monthly rental from January 1, 1954. As the plaintiff is not willing to pay his rent and he fears that defendant would bring an action of unlawful detainer to eject him and to recover said rents for the premises plaintiff had been depositing the monthly sum of P600 a month as rentals, first with the defendant, later with the court. On the basis of the above facts, plaintiff prays that the court fix a monthly rent of the premises at P600 beginning January 1, 1954, and that he be authorized to continue occupying said premises.

The complaint is dated August 23, 1954, but was filed on August 27, 1954. The defendant promptly presented a motion to dismiss, alleging that plaintiff's action is one of consignment, which is not the proper remedy, because the question involved should be decided in an action of forcible entry and unlawful detainer under Rule 72 of the Rules of Court, citing in support of his contention the case of *Pue, et al. vs. Gonzales*, * G. R. No. L-2554-56 promulgated July 21, 1950. Before the court could pass upon this motion to dismiss, counsel for defendant notified the court that on August 28, 1954, he had filed civil case No. 22492 against plaintiff herein for ejectment in the Municipal Court of Manila. The plaintiff filed an opposition to the motion to dismiss, alleging that his action was for the determination of the rental to be paid by him. After hearing the arguments the court dismissed the action on the ground that the question of the rentals will necessarily be involved in the pending action for ejectment:

It is apparent from the facts alleged in the complaint that plaintiff instituted the present action in anticipation of the action of unlawful detainer the defendant was about to institute, and which was actually filed one day after the present action was begun. It is also evident that plaintiff has no cause of action against defendant, because there neither has been a violation of ft right belonging to the plaintiff nor a breach of duty or obligation on the part of the defendant. According to express, statements made in the complaint, defendant fixed the rental at P700 a month and demanded the payment of the same from the plaintiff. This he did by virtue of the insistent demands of the

plaintiff that the defendant fix the rents. There never was any agreement or meeting of the minds between the plaintiff and the defendant as to the amount of the rents. The defendant fixed it at P700 a month, and when he did so, he was absolutely within his rights. As the plaintiff disagreed with the rents fixed by the lessor and owner, his duty is, to get out of the premises; he has absolutely no right to have the court fix the rents and continue occupying the premises pending judicial determination of the said rents. But as he continues occupying the premises and at the same time refuses to pay the rents fixed by the owner, it is the defendant-lessor who has a cause of action against him for his illegal occupancy. Only the owner has the right to fix the rents. The court can not determine the rents and compel the lessor or owner to conform thereto and allow the lessee to occupy the premises on the basis of the rents fixed by it. A lease is not a contract imposed by law, with the terms thereof also fixed by law. It is a consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay rent therefor. (4 Sanchez Roman, 736.) Without the agreement of both parties, no contract of lease can be said to have been created' or established. Nobody can force another to let the latter lease his property if the owner refuses. So the owner may not be compelled by action to give, his property for lease to another.

Hence, plaintiff herein can not bring an action or has no cause of action against defendant. In procedural terms, there has been no violation of any right or breach of any duty by the defendant. As a matter of fact, plaintiff alleges that he had asked defendant to fix the rent and the latter fixed it at P700. If there has been a violation of any right at all, it is the plaintiff who has committed it in insisting to continue in the premises when he is not willing to pay the rents fixed by the owner.

The case of *Pue, et al. vs. Gonzales*, supra, has been cited by the defendant-appellee to sustain his theory that the proper action in which the dispute between the plaintiff and the defendant should be threshed out is in the ejectment case which the defendant instituted. In that case, we held thru Mr. Justice Montemayor:

"Consignation in court under Art. 1176, is not the proper proceedings to determine the relation between landlord and tenant, the period of life of the lease or tenancy, the reasonableness of the amount of rental, the right of tenant to keep the premises against the will of the landlord, etc. These questions should be decided in a case of ejectment or detainer * * * under the provisions of Rule 72 of the Rules of Court. In a case of ejectment, the landlord claims either that the lease has ended or been terminated or that the lessee has forfeited his right as such because of his failure to pay the rents as agreed upon or because he failed or refused to pay the new rentals fixed and demanded by the lessor. The lessee in his turn may put up the defense that according to law, the rental fixed and demanded of him is unreasonable, exorbitant and illegal. * * *. We repeat that all these questions should be submitted and decided in a case of ejectment and cannot be decided in a case of consignation,"

The principle above quoted exactly covers the point at issue, i.e., that the disagreement between a lessor and a lessee as to the amount of rent to be paid by a lessee cannot be decided in an action of consignation but in that of forcible entry and unlawful detainer that the lessor institutes when the lessee refuses to pay the lessor the rents that he has fixed for the property. It may also be added that consignation is proper when there is a debt to be paid, which the debtor desires to pay and which the creditor refuses to receive, or neglects to receive, or cannot receive by reason of his absence. The purpose of consignation is to have the obligation or indebtedness extinguished. In the case at bar, plaintiff seeks to have the obligation determined and fixed, hence his action should not be one of consignation.

For the foregoing considerations, we hold that plaintiff has no cause of action against defendant under the facts alleged in his complaint; that consignation is not the proper remedy; that it is the defendant who has the right or cause of action against the plaintiff because the latter refuses to pay the rents fixed but does not leave the property; and that if the plaintiff claims that the amount of rents demanded by the defendant is unreasonable and

he desires to have it fixed judicially, he may set forth the above facts as defenses in the action of ejectment filed by the defendant against him. The judgment of dismissal is hereby affirmed, with costs against the plaintiff-appellant.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Jugo, Bautista, Angelo, Concepcion, Reyes, J. B. L., and Endencia JJ., concur.

* 8T phil., 81.

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