

RICARDO HAUTEA, PETITIONER, VS. RAMON S. MAGALLON AS JUSTICE OF THE PEACE OF THE MUNICIPALITY OF ZARRAGA AND MANUEL SORIANO, RESPONDENTS.

G. R. No. L-20345. November 28, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal, on points of law, from the judgment of the Court of First Instance of Iloilo, in its Civil Case No. 6082, refusing a writ of certiorari against the Justice of the Peace of Zarraga, Province of Iloilo.

The background of the case is as follows: On January 9, 1962, appellee herein, Manuel O. Soriano, instituted in the Justice of the Peace Court of Zarraga a case for illegal detainer and damages against appellant, Ricardo Hautea, Pleading that the latter had leased from the former a parcel of Agricultural land, covered: by T.C.T. No. 26492; that in violation of the contract of lease defendant Hautea allowed some 22 persons to enter and live in the property without plaintiff's knowledge nor consent; that defendant-lessee, again without the lessor's knowledge, had damaged the land by destroying saltbeds existing thereon, as well as destroyed about sixty hectares of first class rice land, in an unsuccessful endeavor to convert the same into a fishpond, causing the value of the property to deteriorate; and that despite the lessor's demands, the defendant-lessee had refused to restore the riceland to its original condition. The complaint also averred that —

"5. Sometime in the month of December 1961 or more than thirty (30) days from this date, plaintiff demanded in writing that defendant turn over the possession of the property in question to said plaintiff but the defendant has refused to do so in spite of the violations of the terms and conditions of said lease agreement committed by him and denounced above;"

Defendant Hautea filed a motion to dismiss on the ground that the complaint did not allege jurisdictional facts, in that it did not state the date when the lessee had violated the stipulations of the lease contract, and, therefore, did not show that the action was brought within one year from the breach; and that the Justice of the Peace Court lacked jurisdiction over the subject matter in that the action was really one for rescission (resolution) of the lease for breach of the terms thereof.

The Justice of the Peace, Ramon S. Magallon, having denied his motion to dismiss, Hautea filed a petition for certiorari in the Court of First Instance, insisting that the Justice of the Peace had no jurisdiction over the case, and praying that it be enjoined to proceed with the case. By order of August 10, 1962, the Court of First Instance dismissed Hautea's petition; and the latter's motion for reconsideration having been denied, he appealed directly to this Court, assigning two alleged errors, to wit:

"1, The lower court erred in declaring that the Justice of the Peace Court of Zarraga, Iloilo, has jurisdiction to try the case.

2. The lower court erred in failing to take into consideration that the payment of the rental by the appellant and its acceptance thereof by the appellee, Soriano, gave rise to a new lease agreement."

In his first error, appellant insists that the complaint does not allege jurisdictional facts in that nowhere in the complaint filed in the Justice of the Peace Court is it stated that a demand was made by the said appellee, Manuel O. Soriano, on the appellant to comply with the conditions of his lease', as required by section 2 of Rule 72 of the Rules of Court. This assertion is not correct. The original complaint in the Justice of the Peace Court, after alleging the attempted conversion of the riceland into a fishpond, expressly averred that —

"(c) In spite of the demands made by the plaintiff the defendant had refused to restore the riceland mentioned in the preceding subparagraph into its original condition, thereby causing damages to the plaintiff",

which, in effect, pleaded a prior demand on the lessee to comply with the conditions of the lease. The truth of the allegation was conceded by the motion to dismiss in the court of origin.

It is not amiss here to observe that in the Justice of the Peace Court the objection to the sufficiency of the complaint for illegal detainer had been that the complaint did not state the date when defendant violated the terms of the lease contract, and thus failed to show that the action was brought within one year from the time the cause of action accrued. The Court of First Instance rejected this argument by pointing out that the complaint likewise averred in its paragraph 5 (previously quoted) that the demand for restoration of possession had been made in December, 1961, one month before the complaint was filed. It is apparent that appellant is now changing his theory and averring alleged defects not pleaded in the court below. Such change is not permissible on appeal (Sec. 18, Rule 46).

Appellant also argues that for the violation of the lease contract, the lessor's remedy is rescission or resolution of the contract by action in the Court of First Instance. But, as pointed out by the appellee, the violation of the terms of the lease, by devoting the thing leased to a use not stipulated that deteriorated the same, coupled with the demand by the lessor for compliance with the terms of the contract and for the return of the premises, renders unlawful the lessee's further detainer of the land, and entitles the lessor to eject the lessee (Civ. C. Art. 1673; Rule 70, sec. 1, Revised Rules of Court; *Canaynay vs. Sarmiento*, 79 Phil. 36).

The second assignment of error is likewise unmeritorious, because the alleged acceptance of the lessee's payment of the rental is irrelevant to the issue, since the detainer action is premised on violation of the conditions of the lease other than non-payment of rent. Besides, this defense had not been raised in the Justice of the Peace Court, and the Court of First Instance could not take cognizance of it in the certiorari proceedings.

The ordered appealed from is affirmed. Costs against appellant, Ricardo Hautea.

Bautista, Angelo, Concepcion, Barrera, Paredes, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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