

SOLEDAD T. CONSING ASSISTED BY HER HUSBAND, ANTONIO M. CONSING, PLAINTIFFS AND PETITIONERS, VS. JOSE T. JAMANDRE, PERSONALLY, AND AS JUDICIAL ADMINISTRATOR OF THE ESTATE OF CIRI...

G.R. No. L-27674. May 12, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for review on certiorari of the decision of the Court of Appeals in its CA-G.R. No. 36711-R reversing that of the Court of First Instance of Negros Occidental and dismissing the complaint of the plaintiffs-petitioners, besides ordering them to pay the defendant-respondent the amount of P19,000.00

The factual background of the case is as follows:

Plaintiffs (now petitioners) filed in the Municipal Court of Sagay, Negros Occidental, a Complaint for Forcible Entry and Detainer against defendant (now respondent) for taking possession of haciendas "Aida" and "Fe" through force, intimidation, stealth and strategy despite the contract of sub-lease (Annex "A" of the Complaint) executed on October 19, 1962, (the date plaintiffs-petitioners took possession and management of the leased premises) by and between the former, as sub-lessee, and the father of the latter, Cirilo Jamandre, as sub-lessor.

Defendant-respondent filed his answer and averred that he took-over the haciendas in question on September 11, 1963, seven (7) months after the death of his father, Cirilo Jamandre, on February 11, 1963, because of the failure of plaintiff-petitioners to comply with the terms and conditions of paragraphs 3 and 4 of the contract of sub-lease which read as follows:

"3. That the SUB-LESSEE Soledad T. Consing shall pay the SUB-LESSOR Cirilo Jamandre 1,000 piculs of "C" sugar every crop year and to effectuate said payment the Lopez Sugar Central is hereby authorized to register in the name of the SUB-LESSOR Cirilo Jamandre a proportion of 10% of the weekly sugar milled by the SUB-LESSEE properly quedaned until the full amount of 1,000 piculs of "C" sugar shall have been fully paid and satisfied not later than the month of February of every year."

"4. That the SUB-LESSEE Soledad T. Consing shall pay the SUB-LESSOR the amount of TWENTY THOUSAND PESOS (P20,000.00) by way of advance payment every crop year until the duration of the lease. For the payment thereof, the amount of 1,000 piculs of "c" sugar referred in par. No. 3 shall be assigned and/or endorsed to the SUB-LESSEE Soledad T. Consing and after proper liquidation of the same the surplus from the proceeds of 1,000 piculs of C sugar shall be paid to the SUB-LESSOR Cirilo Jamandre not later than the month of February of each crop year."

As justification for the take-over of the leased premises, defendant-respondent cited paragraph 9 of said contract of sub-lease as his authority, the text of which will be quoted hereafter.

After the issues had been joined, the Municipal Court of Sagay, Negros Occidental, rendered judgment on June 5,

1964, in favor of plaintiffs-petitioners, the dispositive portion of which is as follows:

"WHEREFORE, in view of all the foregoing, the Court renders judgment 'for the plaintiff and against the defendant Jose T. Jamandre, personally and in his capacity as Judicial Administrator of the estate of the late Cirilo Jamadre, to vacate from and restore to plaintiff, Soledad Tumbokon Consing, the possession of Hdas. "Aida" and "Fe" covered by Lots Nos. 1257, 1258, 806 and 694 all of Sagay Cadastre, and with costs against the defendant."

Defendant-respondent appealed to the Court of First Instance of Negros Occidental where the appeal was docketed as Civil Case No. 246 on July 25, 1964.

On August 5, 1964, defendant-respondent filed his amended answer with the Court of First Instance of Negros Occidental.

On August 18, 1964, plaintiffs-petitioners filed their Motion To Strike and For Summary Judgment, attaching thereto as Annex "A" the affidavit of Soledad Tumbokon Consing in support of the motion for summary judgment.

Defendant-respondent objected to the motion to strike out the amended answer and for summary judgment.

On August 29, 1964, the Court of First Instance of Negros Occidental admitted the amended answer of defendant-respondent and denied the motion to strike out and for judgment on the pleadings.

The plaintiffs-petitioners moved for the reconsideration of the Order of August 29, 1964, and on September 15, 1964, they filed their Supplement To Motion For Reconsideration to which the defendant-respondent objected.

On October 9, 1964, the Court of First Instance denied the motion for reconsideration, as follows:

"After considering the pleadings in the present case and the provisions of Rule 19 in connection with Rule 34 of the Rules of Court, the Court is of the opinion and so holds that the plaintiff is not entitled to summary judgment.

"IN VIEW OF THE FOREGOING, the Court denies the motion for reconsideration dated September 11, 1964. The Clerk of Court is directed to set the trial of this case on the merits in the November calendar at San Carlos City."

After the plaintiffs-petitioners had filed their Reply With Answer To Counterclaims, the case was set for pre-trial.

On March 31, 1965, the Court of First Instance issued its Pre-Trial Order, to wit:

"After hearing the manifestations of both counsel, the Court finds that there is no possibility of an amicable settlement. According to the theory of the plaintiffs, considering that the prior possession of the plaintiffs is admitted by the defendant, the acts of the defendant in taking the possession of the property are illegal, and that the only question to be resolved in this case insofar as the plaintiffs are concerned is the determination of damages. The defendant, however, contends that according to the stipulations of the contract which is attached to the complaint and admitted by the defendant, the plaintiffs have violated the terms of the stipulations and conditions therein, and by virtue of the stipulations of that contract the defendant is authorized to take possession of the property. The issue therefore, to be resolved by this Court are:

"First: Whether the stipulations in the contract authorize the defendant in the taking of the possession of the property subject of the litigation; and

"Second: The damages that may be adjudicated to either of the parties in the event that a judgment is rendered.

"Therefore, the trial now will be confined to the interpretation of the contract and the determination of damages. There is no need of evidence with reference to the fact of prior possession because that is admitted in

the pleadings and in the open manifestation of the parties."

On August 4, 1965, the Court of First Instance of Negros Occidental, in the exercise of its appellate jurisdiction over Forcible Entry and Detainer cases, rendered judgment, the dispositive portion of which reads as follows:

"IN VIEW OF the foregoing judgment is hereby rendered as follows:

"1. The defendant is ordered to vacate the premises of Lots Nos. 1257, 1258, 806 and 694 of the cadastral survey of Sagay, known as Hdas. "Aida" and "Fe" and to deliver the possession thereof to the plaintiffs;

"2. The defendant is ordered to make an accounting of his expenses and income from the leased property from September 11, 1963 up to the date when the plaintiffs shall have been restored to the possession thereof and the profit or net income shall be paid the plaintiffs;

"3. The defendant shall pay the costs; and

"4. No award for attorney's fees as there is no evidence that the acts of the defendant were inspired by fraud, malice or evident bad faith."

The defendant-respondent appealed to the Court of Appeals which rendered judgment reversing that of the Court a quo, the dispositive portion of which reads as follows:

"WHEREFORE, the judgment appealed from is reversed and another one entered dismissing the complaint of the plaintiffs, and ordering said plaintiffs to pay the defendant, on the counter-claim, the amount of P19,000.00 which however, should be deducted from the proceeds of the sugarcane harvested by the appellant, who is ordered to render an accounting of the sugar cane he harvested for the crop year 1962-63, the excess thereof, if any, after such accounting is made, is ordered to be delivered to the appellees.

"On equitable considerations, without special pronouncement as to costs."

The plaintiffs-petitioners' motion for reconsideration and Addendum To Motion For Reconsideration having been denied, the herein petition for review on certiorari was filed.

Plaintiffs-petitioners maintain that summary judgment should have been rendered by the court a quo in view of the failure of the defendant-respondent to file a counter affidavit or verified opposition. Besides, defendant-respondent admits having taken possession of the leased premises. Plaintiffs-petitioners likewise maintain that the original case being one of forcible entry, reception of evidence should have been limited only to that of possession de facto, and that the contractual stipulation no. 9 of the Contract of Sublease (Annex "A" of the Complaint and submitted as Exhibit "A") authorizing defendant-respondent to take possession of the leased premises without need of a court action is illegal.

Petitioners further contend that the only issue in forcible entry case is the physical possession of the property involved, which is only possession de facto and not possession de jure; that what is needed to be proved only in forcible entry case is prior possession, and that if one could prove prior possession of the property under litigation, he is entitled to stay thereon until he is lawfully ejected by a person having a better right either by accion publiciana or accion reivindicatoria.

Petitioners argue that the contractual stipulation in the contract of sub-lease with the herein respondent, authorizing the latter to take possession of the leased premises even without resorting to court action is illegal and violative of due process. They maintain that this is tantamount to a renunciation of one's day in Court and, therefore, null and void. Besides, this might open the floodgates to violence which our laws seek to suppress.

Respondent, on the other hand maintains that he took possession of the leased property because he is authorized to

do so under the contract (Annex "A" of the Complaint; Exh. "A"). Respondent further maintains that the appellate court did not err in proceeding with its interpretation of the contract of sub-lease of the parties and in determining the amount of damages because the parties so agreed during the pre-trial of the case. Respondent also claims that the stipulation "without necessity of resorting to any court action", in the contract of sub-lease (stipulation no. 9, Annex "A" of the Complaint; Exh. "A") is not tainted with illegality because it does not provide for the use of force in the taking of possession by the sub-lessor (respondent in the present case) and, therefore, the same is not offensive to the law against forcible entry or to public policy which, for the preservation of the public peace, does not allow taking the law into one's own hands.

I

The principal issue, therefore, to be resolved is whether or not the stipulation in the contract of sub-lease between the parties authorizing the herein respondent, as sub-lessor, to take possession of the leased premises including all its improvements thereon without compensation to the sub-lessee (herein petitioners) and without the need of judicial action is valid and binding.

For a better understanding of the controversy, the contractual stipulation is hereunder quoted:

"9. That in case of the failure on the part of the SUB-LESSEE to comply with any of the terms and conditions thereof, the SUB--LESSEE hereby gives an authority to the SUB-LESSOR or to any of his authorized representative to take possession of the leased premises including all its improvements thereon without compensation to the SUB-LESSEE and without necessity of resorting to any court action but in which case the SUB-LESSEE shall be duly advised in writing of her failure to comply with the terms and conditions of the contract by way of reminder before the take-over."

This stipulation is in the nature of a resolutory condition, for upon the exercise by the Sub-lessor of his right to take possession of the leased property, the contract is deemed terminated. This kind of contractual stipulation is not illegal, there being nothing in the law proscribing such kind of agreement. As held by this Court in *Froilan vs. Pan Oriental Shipping Co.*, G.R. No. L-11897, October 31, 1964; 12 SCRA 276, 286:

"Under Article 1191 of the Civil Code, in case of reciprocal obligations, the power to rescind the contract where a party incurs in default, is impliedly given to the injured party. Appellee maintains, however, that the law contemplates of rescission of contract by judicial action and not a unilateral act by the injured party; consequently, the action of the Shipping Administration contravenes said provision of the law. This is not entirely correct, because there is also nothing in the law that prohibits the parties from entering into agreement that violation of the terms of the contract would cause cancellation thereof, even without court intervention. In other words, it is not always necessary for the injured party to resort to court for rescission of the contract. As already held, judicial action is needed where there is absence of special provision in the contract granting to a party the right of rescission."

Judicial permission to cancel the agreement was not, therefore, necessary because of express stipulation in the contract of sub-lease that the sub-lessor, in case of failure of the sub-lessee to comply with the terms and conditions thereof, can take-over the possession of the leased premises, thereby cancelling the contract of sub-lease. Resort to judicial action is necessary only in the absence of a special provision granting the power of cancellation. (*De la Rama Steamship Co., vs. Tan*, G.R. No. L-8784, May 21, 1956; 99 Phil. 1034).

II

On the question that the reception of evidence should have been limited to possession de facto only, We rule that the court a quo did not err in going further by interpreting the contract of sub-lease. While it is true that the only

issue in forcible entry or unlawful detainer action is the physical possession of the leased property, that is possession de facto — not possession de jure, yet the court may go beyond that if only to prove the nature of the possession. (Pitargue vs. Sorilla, L-4302, September 17, 1952; 48 O.G. 3849). The court may receive evidence upon the question of title, or for that matter possession de jure, solely for the purpose of determining the character and extent of possession and damages for the detention. (Sec. 88, Judiciary Act of 1948, as amended by R.A. Nos. 2613 and 3828, approved June 22, 1963).

III

As to the legal question that summary judgment should have been rendered by the court a quo, We rule that plaintiffs-petitioners are not entitled, as a matter of right, thereto. Summary judgment can only be granted where there are no questions of fact in issue or where the material allegations of the pleadings are not disputed. Such is not true in the case at bar. Firstly, defendant-respondent maintains that plaintiffs-petitioners failed to comply with the terms and conditions of their agreement. Secondly, in view of such failure on the part of plaintiffs-petitioners, the defendant-respondent maintains that under their contract of sub-lease he is authorized to take-over the possession of the leased premises.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed. Costs against petitioners. So ordered.

Castro, Chairman, Makasiar, Munoz Palma and Martin, JJ., concur.

Teehankee, J., took no part.

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