

DIONISIO B. GALLARDE, PLAINTIFF AND APPELLANT, VS. CESAR S. MORAN AND LIBORIA L. MORAN, DEFENDANTS AND APPELLEES.

G.R. No. L-19572. July 30, 1965

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

The above-mentioned plaintiff prays for reversal of the order of the Honorable Montano A. Ortiz of Agusan dismissing his complaint for ejectment against Cesar S. Moran, et al.

The record shows that on June 2, 1961, Dionisio B. Gallarde filed such complaint for "ejectment and damages", in the Court of First Instance of Agusan, alleging substantially that: (a) in 1954, he permitted defendants to occupy a parcel of urban land belonging to him, because the latter promised to pay monthly rentals of P15.00, later reduced to P12.00 and then to P10.00; (b) that the rentals were payable in advance every first week of the month; (c) that defendants were irregular in their rental payments; (d) that in view thereof, he notified them in January 1960 that beginning March of that year the rental would be 80 pesos a month and if defendants were not 'agreeable' to the new condition, he "made the demand against defendants to vacate plaintiff's land"; (e) that afterwards, defendants failed to pay rentals for several months; (f) that he thereby suffered moral and actual damages; and (g) that defendants, "who in spite of plaintiffs demand against them to vacate the leased land refused to do so" should be required to pay exemplary damages. The complaint ended with the prayer: (1) that defendants be ejected from the parcel of land; and (2) that they be ordered to pay damages and costs.

The defendants filed a motion to dismiss on several grounds, one of which was based on the lack of cause of action, the complaint having made no allegation of a previous demand upon the defendants to vacate the premises in accordance with the provisions of sec. 2 of Rule 72 of the Rules of Court.

On this ground, the trial judge dismissed the complaint, as stated. The plaintiff appealed.

We find this appeal to have no merit. Sec. 2 of Rule 72 of the Rules of Court, in force in 1961, directs specifically that,

"Section 2. Landlord to proceed against tenant only after demand.—No landlord, or his legal representative or assign, shall bring such action against a tenant for failure to pay rent due or comply with the conditions of his lease, unless the tenant shall have failed to pay such rent or comply with such conditions for a period of fifteen days, or five days in the case of building, after demand therefor, made upon him personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no persons be found thereof."

We have carefully, and repeatedly, read the complaint. It fails absolutely to make allegations establishing a cause of action conformably to the above Rule.

The only allegations of demand to vacate were those hereinabove described. The first was not a definite demand to vacate: it was conditional. It merely said, that if defendant refused to agree to pay 30 pesos a month, then

plaintiff would demand that they vacate. There is no allegation that defendants refused to agree.

The second allegation of demand, was quite indefinite. It inferentially says that plaintiff, demanded that defendants vacate the land; but it does not say when. So the condition imposed by sec. 2 of Rule 72 that the demand be made at least fifteen days or five days before bringing the action has not been fulfilled. Again, the complaint does not allege that the demand to vacate was made for failure to pay rent or comply with conditions of the contract.[1] And again, the complaint does not allege facts to show that such "demand" had been made in the form required by Sec. 2, viz., personally, or by serving written notice, or by posting such notice.

Wherefore, the appealed order is affirmed, with costs against appellant.

Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

[1] Maybe plaintiff demanded the return of his land by reason of his "other future plan over said land for his own use" as alleged in par. 7 of the complaint.

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