

GERARDO VASQUEZ, PLAINTIFF AND APPELLANT, VS. PATROCINIO GARCIA, DEFENDANT AND APPELLEE.

G. R. No. L-2100. May 30, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action for ejectment to vacate the upper floor of the house situated at No. 764 San Sebastian St., Manila, and also the garage thereof, and for damages. The Municipal Court rendered judgment for the plaintiff.

At the hearing before Hon. Guillermo Cabrera, plaintiff's witness Anselmo M. Shotwell, owner of the premises, was asked by defendant's counsel on cross-examination, whether or not the monthly rental of P300 for the upper floor of the house in question was in accordance with the rental law (Executive Order No. 62 of the President, promulgated on June 21, 1947), which requires that rental for residential houses should not be more than 12 percent of the annual assessed value. In reply, said witness stated that he had not checked up, but promised he would. After receiving a copy of the Municipal Court decision, Shotwell returned to defendant the check she sent him for P300 in payment of the rental as ordered in the decision informing the defendant that she would charge her only P162.08, because the latter amount is in accordance with the rental law. In view of this voluntary offer to reduce the rental, defendant, thru counsel, accordingly moved for a new trial for the purpose of ascertaining which of the two amounts would be paid to the owner of the house. While defendant's motion for new trial was pending consideration, defendant sent to Shotwell a check for P162.08 in compliance with the latter's desire, but Shotwell, evidently advised by his counsel, declined to receive the check saying that he preferred to wait until the final determination of the case. The court denied the motion for new trial, so defendant appealed to the Court of First Instance.

After due hearing, the court rendered judgment in favor of the plaintiff and against the defendant, "ordering the defendant to vacate the premises, namely, the upper floor of the house located at No. 764 San Sebastian, City of Manila, and also the garage thereof; to restore to the plaintiff the possession of said premises, to pay either to the plaintiff Doctor Vasquez or directly to the administrator of the aforementioned premises the monthly rental of P162.08 from July 1, 1947, until said defendant vacates the premises in question, and to pay the costs of suit."The court did not make any pronouncement with respect to any damage suffered by the plaintiff. From this decision both parties appealed. The case was taken to this Court because plaintiff raised the constitutionality of Executive Order No. 62 of the President promulgated on June 21, 1947.

Defendant-appellant has assigned seven (7) errors allegedly committed by the lower court, but in substance they may be boiled down to the following: That the lower court erred in refusing to hold that there has been a novation of the contract of lease by the substitution of tenant pursuant to the mutual consent of all the interested parties, or stated differently, it is contended that in July 1946, when plaintiff made the arrangement whereby the defendant could deal directly with the owner of the premises with respect to the payment of the rental and the latter agreed to said arrangement, there was a substitution of tenant.

With regard to this point, counsel for defendant advances the following argument: "Although it is true that Doctor Vasquez had originally rented the upper floor of the house, the fact remains, as he himself and Shotwell had admitted in their respective testimonies, that he, Doctor Vasquez, had never occupied the premises at any time; that he had allowed Miss Garcia to occupy the premises in his place since the beginning of the lease; that for the first three months of the lease (May, June and July, 1946) he had paid Shotwell the corresponding rents with money furnished by Miss Garcia; that from the month of August, 1946, under a final arrangement or "understanding" whereby Doctor Vasquez gave up the premises in favor of Miss Garcia, and for which she was congratulated by Shotwell in his letter to her dated July 20, 1946 (please see Exhibit "1" of defendant), Miss Garcia has been paying the same rent directly to Shotwell, all of which payments have been properly receipted for by him to her. These are circumstances which undoubtedly and conclusively prove the substitution."

We cannot conceive how the above stated circumstances would constitute novation or substitution of tenant in the light of the events that had transpired between the parties. Nor can the alleged arrangement whereby plaintiff allowed defendant to pay the rental direct to Shotwell be considered as an estoppel that would bar plaintiff from contesting the relation of tenancy which defendant claims to have been established between her and Shotwell. There are factors which negative this conclusion and which show in bold relief that there was no substitution of tenant.

These factors are: (1), Shotwell agreed to lease the premises to plaintiff for purely personal considerations, because plaintiff was the doctor of the family of Shotwell, and as such, Shotwell would never have consented to such substitution; (2), plaintiff, immediately after the premises were leased to him by Shotwell, made improvements thereon in the amount of P300. Neither the defendant nor Shotwell has reimbursed him said amount. Neither has plaintiff demanded reimbursement from either the defendant or Shotwell. On the contrary, it has been established that Shotwell even tendered to the plaintiff the reimbursement of said amount, but the latter declined to accept the payment saying he was going to occupy the premises in a nondistant future; (3), and that from the beginning the rentals were paid by defendant directly to plaintiff who, in turn, turned them over to Shotwell, and this arrangement was only changed because it entailed waste of time as well as unnecessary expenses to Shotwell, because while Shotwell would go to San Sebastian St. to collect the rentals from the tenants downstairs, he would still go to the office of plaintiff at calle Lico to collect the rental for the upper story, and afterwards the defendant in turn would reimburse the plaintiff for the amount plaintiff paid to Shotwell. Moreover, the testimony of Shotwell carries much weight on this controversy, he being the owner of the premises, and he said he never considered defendant as his tenant for the reason that he yielded the premises to plaintiff only for personal considerations (p. 14, t. s. n.). In the face of these circumstances, it is indeed quite hard to believe that plaintiff has already given up the idea of holding on to his original contract of lease simply because he yielded the premises temporarily to defendant. All of this belies the contention of counsel for defendant. Counsel for defendant also contends that under the applicable provisions of Commonwealth Act No. 689, as amended by Rep. Act No. 66, defendant cannot be ejected from the premises if for no other reason than social justice, citing in support of his contention the case of Santos vs. De Alvarez, promulgated on June 18, 1947 (44 Off. Gaz., 4259). This Court indeed said in that case that "the purpose of the law is evidently to relieve the present situation arising from the scarcity of housing facilities by protecting particularly the thousands of impoverished people who in the war of liberation lost their houses together with almost all their belongings and found shelter in houses owned by others." But this situation contemplated by this law, plausible as it is, is not now obtaining in view of the numerous houses that have been of late constructed in and outside Manila not only for residential but for commercial purposes as well which have greatly eased up the housing situation of the people. Moreover, defendant overlooks the fact that under section 2, of said Republic Act No. 66, as amended, a lessor can bring an action for ejectment if he needs to occupy the building leased, and plaintiff may stand in the same footing as

lessor inasmuch as defendant has taken the property in lease directly from him. At any rate, the present action of ejectment is predicated upon the peculiar arrangement whereby plaintiff merely allowed defendant to occupy the premises thru accomodation, and when this arrangement is disregarded if not trampled upon, the law must come to the rescue of the plaintiff. It is just and proper that he be installed in the premises which he is entitled to occupy when the interests of his family so require.

As stated at the outset, plaintiff took this case to this Court because of his claim that Executive Order No. 62 is unconstitutional. It appears, however, that this question has already been passed upon by this Court in the case of *Araneta vs. Dinglasan*, [*] 45 Off. Gaz., 4411, wherein it was held that said Executive Order is unconstitutional. This satisfies the claim of the plaintiff. Nevertheless, we are of the opinion that the decision of the lower court reducing the rental to P162.08 should be maintained in view of the spontaneous offer made by Shotwell to reduce the rental as formerly indicated. This may be considered as a concession on the part of Shotwell to the tenant. He was not obliged to make the reduction before the validity of the order has been finally determined. Moreover, it is strange that plaintiff would object to the reduction of his rental based on the illegality of said Executive Order, it being a circumstance that benefits him, which cannot be offset by his claim that, if he wins this case, he may be compelled by Shotwell to pay him a monthly rental of P300. In so far as the amount of rental is concerned, what may be decided by the Court in this case would bind both plaintiff as well as defendant, more so when the reduction is predicated upon the voluntary offer of Shotwell.

The remaining question to be determined refers to the claim for damages of the plaintiff which the lower court refused to consider. It is contended that because of the refusal of the defendant to yield the premises to plaintiff, the latter was forced to look for another house and to pay a rental of P450 a month. He therefore suffered damages on the basis of P150 a month for the period he has been deprived of the use of the property.

The law regarding damages that may be awarded in a case of forcible entry and detainer is well portrayed by former Chief Justice Moran as follows:

"Plaintiff is entitled to damages in an action for forcible entry and detainer. Allegation of such damages in the prayer of the complaint is sufficient. But what is the character of these 'damages'? Since the only issue in actions for forcible entry and detainer is physical possession, the damages which plaintiff is entitled to are such as he may have sustained as a mere possessor. Material possession involves only the enjoyment of the thing possessed, its use and the collection of its fruits, and these are the only benefits which the possessor is deprived of in losing his possession. In other words, plaintiff is entitled only to those damages which are caused by his loss of the use and occupation of the property, and not to such damages as are caused to the land or building during the unlawful possession, which he may recover only if he were the owner of the property, and he cannot be declared as such in an action for forcible entry and detainer. Damages to property may be recovered only by the owner in an ordinary action. Accordingly, plaintiff is entitled to the annual yield of the palm existing on the land taken by the defendant, but not to the value of the palm trees cut down. In other words, the damage which may be claimed in an action for forcible entry, is the damage equivalent to a reasonable compensation for the use and occupation of the premises by the trespasser." (Moran, R. C. Vol. 2, p. 279).

As may be seen, while damages may be awarded in an action for forcible entry and detainer, the damages which plaintiff may claim are such as he may have sustained as a mere possessor. In other words, plaintiff is entitled only to those damages which are caused by his loss of the use and occupation of the property and not to such damages as he may suffer which have no direct relation with such use and occupation. As we have said before, plaintiff steps into the shoes of the lessor, and as such he cannot recover damages other than the reasonable value of the use and enjoyment of the property. In this case, this value is represented by the rental of P300, or the sum of P162.08 as reduced by Shotwell, and as long as this is paid by the lessee any other damage which plaintiff may suffer which bears no direct relation with the occupation of the leased premises must be the subject of a separate

action. The lower court acted correctly in not awarding any damage to the plaintiff.

Wherefore, the decision appealed from will be affirmed, without pronouncement as to costs.

Feria, Pablo, Bengzon, Tuason, Reyes, Montemayor and Jugo, JJ., concur.

[*] 84 Phil., 368.

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