

**F. S. DIVINAGRACIA AGRO-COMMERCIAL, INC., PETITIONER, VS.
HONORABLE COURT OF APPEALS AND RUFINO FERNANDEZ,
RESPONDENTS.**

G.R. No. L-47350. April 21, 1981

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for certiorari to review the decision of the Court of Appeals in CA-G.R. No. S.P. 06585 entitled "Rufino Q. Fernandez vs. Hon. Ricardo M. Ilarde, et al.," promulgated on September 22, 1977.

The facts of this case are clear, undisputed and may be summarized briefly as follows:

Private respondent's father was the original lessee of the building and lot owned by the late Doña Concepcion Gay de Loring and the spouses Mercedes Van Kauffman and Jaime Ibañez de Aldecoa. This lease dates back to 1899. After his father's demise, private respondent continued the lease. The building and lot subject of the lease was bought by petitioner herein from the intestate-estate of the original owners for the sum of P250,000.00 on July 9, 1974. Before its purchase, private respondent was a lessee of the said owners and was paying them a rental of P1,250.00 a month. After the purchase, the rental corresponding to the first half of the month of July, 1974 in the sum of P625.00 was paid by private respondent to the original owners and that of the second half in the sum of P625.00 to the new owner, petitioner herein. In the continuance of the lease, it was verbally agreed by and between the petitioner and private respondent that the rental for the succeeding months would be increased to P2,000.00 starting August, 1974. This went on until September, 1975. About the second week of October, 1975, private respondent was informed by a representative of petitioner, Atty. Santiago Divinagracia, that his contract of lease would terminate on October 31, 1975. When private respondent refused to vacate the premises on October 31, 1975, petitioner reiterated the advice earlier made in a letter dated November 4, 1975 formally advising him of the termination of the lease on October 31, 1975 and giving him, the private respondent, a final extension to occupy the premises up to the end of November, 1975, for which reason petitioner refused to accept further payment of rentals for December, 1975. Private respondent in turn informed petitioner that he was depositing his rentals for the succeeding months with the Clerk of Court.

A complaint for unlawful detainer was filed by herein petitioner against private respondent before the City Court of Iloilo, Branch I, which rendered a decision in favor of private respondent, the dispositive portion of which reads:

"WHEREFORE, this court hereby renders its decision ?

- a. Dismissing the complaint;
- b. Ordering defendant to pay the plaintiff the sum of P3,000.00 a month as the reasonable rent for the use of the premises, beginning January, 1976;
- c. Fixing the duration of the lease of defendant which, since 1899 to the present, is 76 years, at one year for

every 10 years, i.e., that defendant may continue to lease the premises for seven and a half (7-1/2) years to commence from finality of the decision;

without pronouncement as to the costs."

From the decision, petitioner appealed to the Court of First Instance which modified the City Court's decision by:

"(a) Dismissing the complaint;

(b) Ordering defendant to pay plaintiff the sum of P3,000.00 a month, as the reasonable rent for the use of the premises, beginning January, 1976; and

(c) Extending the duration of the lease by defendant of plaintiff's property to one (1) year to commence from finality of the decision,

without pronouncement as to costs."

From the latter decision, private respondent filed a petition for review before the Court of Appeals which modified the previous decision. The dispositive portion of the Appellate Court's decision states:

"WHEREFORE, and as thus modified, in the sense that the lease should be as it is hereby extended for another five (5) years, the judgment of the court a quo is affirmed in all other respects. Without pronouncement as to costs."

From the judgment of the Court of Appeals, petitioner herein appealed by certiorari to this Court, assigning a single error involving a legal issue, to wit:

The respondent Court of Appeals committed a grave error in the correct application of Article 1687 of the New Civil Code by extending the lease for another five (5) years which is a grave abuse of discretion amounting to lack or in excess of its jurisdiction.

Petitioner, in support of the foregoing assigned error, argues upon the following considerations:

I. The Court of Appeals practically made a contract between the parties which is contrary to the spirit and intent of Article 1687 of the New Civil Code;

II. The Court of Appeals did not show that the Court of First Instance of Iloilo, Branch V, presided by the Hon. Judge Ricardo M. Ilarde to which this case was originally appealed, gravely abused its discretion by reducing the term of the lease to only one (1) years;

III. The conclusion arrived at by the Court of Appeals are contrary to law, the admitted facts and admission of the parties;

IV. The Court of Appeals did not observe the criteria set out by this Honorable Court in the application of Article 1687 of the New Civil Code in the exercise of its discretion.

The first and fourth arguments of the petitioner relate solely to the proper application of Article 1687 of the New Civil Code, hence We are constrained to consider and resolve them together. Petitioner alleges that there was grave abuse of discretion by the Court of Appeals in reckoning the occupancy of the lessee from 1899 when his predecessor-in-interest was the occupant of the premises. It should have been reckoned only from his personal occupancy of the premises. Petitioner further alleges that the Court of Appeals was oblivious of the following facts: (1) There was a change of ownership - the lessor became owner only on July 9, 1974; (2) The leased premises is a commercial lot; (3) The private respondent was made to understand that in the future, the petitioner may need the premises for its own use; (4) The private respondent has admitted that he has two stores, one at the premises subject of this case and the other store located at his own commercial building; and (5) The petitioner

herein was the one who filed the unlawful detainer case. It could have been another matter had the private respondent filed an independent action asking for the fixing of the period of the lease.

Withal, petitioner concluded that the decision of the respondent Court is most unfair, arbitrary and inequitable. It is unjust and authoritarian. The Court practically made a contract between the parties. It curtailed the basic human right of the parties of their freedom to contract.

Petitioner's contention is devoid of merit. In the first place, it is beyond dispute that Article 1687 of the New Civil Code is applicable, which article states:

"Art. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the court may fix a longer term for the lease after the lessee has occupied the premises for over one year. x x x"

Article 1687 of the New Civil Code must be correlated with Article 1197 of the New Civil Code which provides:

"Art. 1197. If the obligation does not fix a period, but from its nature and circumstances it can be inferred that a period was intended, the court may fix the duration thereof. x x x"

Considering both Articles together, it is at once clear and evident that the court is accorded the power to fix a longer term for the lease, which power is potestative or discretionary in nature. This prerogative is addressed to the court's sound judgment and is controlled by equitable considerations. "The court may fix a longer term where equities come into play demanding an extension." (Divino v. Fabie de Marcos, 4 SCRA 186).

It may not, therefore, be contended that the Court of Appeals in the exercise of its discretionary power under Article 1687 in relation with Article 1197 made a contract between the parties, since the very purpose of the law is not the fixing of a longer term for the lease, but to make the indefinite period of lease definite by fixing once and for all the remaining duration of the lease.

Neither can We sustain the factors assigned by the petitioner herein, which the Court of Appeals refused to appreciate. Squarely resolving these factors, that there was a change of ownership, the lessor became the owner only on July 9, 1974, and that the lease is not recorded in the Registry of Property, is of no moment. In the first place, that purchaser is bound to continue the lease is explicit under Article 1676 of the Civil Code, more specifically the same article provides: "The purchaser of a piece of land which is under a lease that is not recorded in the Registry of Property may terminate the lease, save when there is a stipulation to the contrary in the contract of sale, or when the purchaser knows of the existence of the lease." Such knowledge of the lease was established in the findings of the Court of Appeals, thus:

"x x x that private respondent knew of the existence of such lease is eloquently shown by the fact that when the private respondent bought the property on July 9, 1974, the private respondent received only the rental corresponding to the second half of the month of July, or the sum of P625.00. The rental for the first half of the same month was in fact paid to the former owner. This circumstance not only shows that private respondent know of the existence of such prior lease, but also that they knew the monthly rental fixed for the lease of the premises. x x x we therefore entertain no doubt that private respondent knew of the existence of such lease and that from its actuation from August 1974 to September 1975, it allowed the herein petitioner to continue with the lease indefinitely x x x."

Secondly, that the leased premises is a commercial lot finds no legal significance. Article 1687 does not make any qualification nor distinction as to its application. Under the principle of *expressio unius est exclusio alterius*, the law applies to both residential and commercial lands as well. Thirdly, that private respondent was made to

understand that in the future the petitioner may need the premises for its own use is without importance in the case at bar. Whether or not there was such an understanding would not affect the lease contract existing between the parties. Such knowledge is not sufficient to terminate an existing contract in compliance with the provisions of Article 1687. To hold otherwise would be making a fetish of a technicality which the law abominates. Besides, every owner is precisely interested in his own property and the fact that he may need the property at some future time is beyond human scruples. But then the question of when such future time will arise is potestative in nature and will depend on the prevailing circumstances and conditions as well as the acquiescence of the parties, so that by reason of equity, justice and fairness, Article 1687 supplies the remedy in the event the parties decide to terminate their contract. Fourthly, that private respondent admitted that he has two stores, one at the subject premises and the other at his own commercial establishment, does not alter the applicability of Article 1687, considering the fact that the private respondent's other store is also tenanted and as the Court of Appeals correctly pointed out, "x x x It would be most difficult for him to eject the tenants of his property for him to move in. x x x Moreover, petitioner established his hardware business in the premises since 1946. Any sudden transfer would certainly affect his business x x x." Finally, the fact that petitioner herein was the one who filed the unlawful detainer case instead of the private respondent is immaterial considering that private respondent had in his counterclaim prayed that "the Court fix the term of the lease to ten (10) years from the final termination of the case." The provision of Article 1687 may be interposed as a defense in the answer (*Imperial Insurance Inc. v. Simon*, 14 SCRA 855), or as a counterclaim therein. The exercise of the power given to the Court in Article 1687 to extend the period of the lease when the defendant has been in occupancy of the premises for more than a year, does not contemplate a separate action for that purpose. That power may be exercised as an incident in the action for ejectment itself and by the court having jurisdiction over it (*Ramirez vs. Sy Chit*, 21 SCRA 1364). Moreover, We cannot lose sight of the fact that it would be an idle and costly procedure to require the lessee to file another action to have the term of the lease fixed, with all the possible delays and inconveniences attendant upon a lawsuit.

Apropos the second argument that the Court of Appeals did not show that the Court of First Instance of Iloilo to which this case was originally appealed, gravely abused its discretion, the petitioner maintains that since it is the lower court which is familiar with the reigning conditions of each locality, its judgment on the additional term to be granted to the lessee in each case should not be interfered with on appeal, absent a clear abuse of discretion.

It is well to stress that in a petition for review, the appellate court has the discretion to alter, modify or affirm the decision brought to it on appeal. In the exercise of such discretion, it may either increase or decrease the extension of the lease period granted by the lower court.

The onus probandi that the respondent Court committed grave abuse of discretion is upon the petitioner himself, and not the court reviewing the decision. The petitioner must show on certiorari that the appellate Court exercised its discretion arbitrarily or despotically. We have examined the records and We find nothing of importance to warrant a disturbance of the conclusions reached by the respondent Court of Appeals. In view of Our settled and established jurisprudence, that when the lower court has jurisdiction over the subject matter of the case, its actuation in the exercise of such jurisdiction is not correctible by certiorari (*Matanog v. Alejandro*, G.R. Nos. L-22502-03, June 30, 1964).

The final argument of the petitioner faults the Court of Appeals' findings as contrary to law, admitted facts and admission of the parties. The advocacy is without merit. It is a legal rule that not every error in the proceeding or every erroneous conclusion of law or of fact is abuse of discretion. In the absence of any indication and cogent reason, We will not encroach upon the respondent Court's prerogative. After a careful perusal of the judgment of the Court of Appeals, We find no reversible error committed that would warrant the reversal of the present case.

We are in full accord with the findings and conclusions of the respondent Court as the same are final and binding upon Us. Hence, We again reiterate the voluminous jurisprudence to the effect that "findings of facts of the Court of Appeals are binding on the Supreme Court and cannot be reviewed. (Torres v. People, 39 SCRA 28; Heirs of Francisco Pasco v. Han Pia, 45 SCRA 164; Tolentino v. De Jesus, 56 SCRA 167; Tiongco v. De la Merced, 58 SCRA 89).

We are not unmindful that the foregoing established rule admits of exceptions, such that the findings of fact of the Court of Appeals may be reviewed by Us:

- (1) When the same are grounded entirely on speculation, surmises or conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) When there is grave abuse of discretion;
- (4) When the judgment is based on misapprehension of facts; and
- (5) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee. (Ramos v. CA, 63 SCRA 331; Napolis v. CA, 43 SCRA 301).

We find that not one of the exceptional circumstances aforementioned is present in the case at bar. The findings of facts of the appealed decision are sufficiently supported by substantial evidence, and the conclusions drawn therefrom are not against the law or jurisprudence. The decision of the Court of Appeals rests on cited doctrinal jurisprudence, justice and equity as it stated that:

"Considering the doctrine laid down in the said decisions (Gregorio Araneta, Inc. vs. Dolores de Mesa, 35 SCRA 137, and Divino vs. Marcos, et al., 4 SCRA 186), and the fact that the petitioner had been in the occupancy of the premises since 1899, petitioner's occupancy has gone for no less than 70 years, We, therefore, find in the broader interest of justice and equity the extension of the lease should be for a period of five (5) years."

After having gone at length over the records of the present case, and in the light of the above pronouncements, We are positively convinced that the petitioner is not entitled to the writ of certiorari. There is absolutely no showing that the respondent Court acted so "arbitrarily", "despotically", or "capriciously" as to amount to lack of jurisdiction in reviewing the appealed decision. It is settled to the point of being elementary that the only question involved in certiorari is jurisdiction, either want of jurisdiction or excess thereof, and abuse of discretion shall warrant the issuance of the extraordinary remedy of certiorari when the same is so grave "as when the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined, or to act at all, in contemplation of law (Abig v. Constantino, 2 SCRA 299; Abad Santos v. Province of Tarlac, 67 Phil. 480; Alafritz v. Wable, 72 Phil. 278). Even mere abuse of discretion is not sufficient by itself to justify the issuance of a writ of certiorari. For that purpose, the abuse of discretion must be grave and patent and it must be shown that it was exercised arbitrarily or despotically (Travera Luna, Inc. v. Nable, 72 Phil. 278; Villa Rey Transit, Inc. v. Bello, 75 SCRA 735) which is not the case made out by the present petition.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the Court of Appeals is hereby **AFFIRMED**, with costs against the petitioner.

SO ORDERED.

Makasiar, Fernandez, and Melencio-Herrera, JJ., concur.

Teehankee, Acting C.J., files a separate concurrence.

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CONCURRING OPINION

TEEHANKEE, Acting C.J.:

I concur in the result of the judgment penned by Mr. Justice Guerrero affirming the decision of the Court of Appeals. Said decision of the Court of Appeals extended the lease of respondent over the commercial property for an unqualified period of five (5) years "in the broader interest of justice and equity," and modified that of the Court of First Instance which extended the duration of respondent's lease of petitioner's property "to one (1) year to commence from finality of the decision." Accordingly, it should be understood that such flat and unqualified five-year extension granted by the appellate court should be counted from the date of promulgation of its decision on September 22, 1977 which will therefore expire on September 21, 1982.

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