

PILAR G. VDA. DE KRAUT, PLAINTIFF AND APPELLANT, VS. MANUEL LONTOK, DEFENDANT AND APPELLEE.*G.R. No. L-18374. February 27, 1963*

Ponente: DIZON, J.

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Mathias Kraut, deceased husband of appellant Pilar G. de Kraut, owned several apartment houses situated at Carpena St., Quiapo, Manila, one of which was leased to appellee Manuel Lontok at a monthly rental of P40.00. After the last war, Kraut raised the rentals to P60.00, and as the tenants refused to pay the increased rental, Kraut filed ejectment proceedings in the Municipal Court of Manila against them, including appellee. The cases, however, were amicably settled, the tenants having agreed to pay the increased rentals, except Lontok who was allowed to continue paying P40.00 monthly.

Upon the death of Kraut, appellant commenced Civil Case No. 21154 in the same court for unlawful detainer against several of her tenants, including Lontok. The defendants defaulted, and from the decision sentencing them to vacate the premises and to pay appellant the sum of P60.00 as reasonable monthly rental until they vacate the premises, they appealed to the Court at First Instance of Manila (Case No. 18658). Upon their failure to deposit in full the rents pending appeal, Mrs. Kraut moved for the immediate execution of the judgment of the municipal court, but her motion was denied. Thereupon she brought the matter on mandamus to Us (G. R. No. L-6900), and on April 29, 1956, we rendered judgment ordering the immediate execution of the aforesaid decision against all the defendants, except Lontok, who was allowed to make up for the difference in his monthly rental deposits, as he had been depositing the sum of P40.00 only as monthly rental instead of P60.00 as adjudged, by the municipal court.

On September 6, 1957, the Court of First Instance of Manila dismissed the case "without prejudice" for failure to prosecute. All the monthly rental deposits were withdrawn by appellant.

From October 1957, Lontok resumed paying appellant the original rental of P40.00 until February 17, 1959 when the latter commenced an action (Civil Case No. 40638) in the Municipal Court of Manila against him for ejectment and recovery of the difference in rental amounting to P20.00 per month from October 1957. Lontok lost and appealed to the Court of First Instance of Manila. After trial the court dismissed the case and ordered appellant to reimburse appellee the sum of P1,180.00 representing the total amount of monthly rental deposits in excess of P40.00 made by the latter in Civil Case No. 18658 of the Court of First Instance of Manila. Hence this appeal.

The first question to be determined is whether appellant had a cause of action for an unlawful detainer against appellee.

In this connection it appears that prior to the commencement of this action in the Municipal Court of Manila, appellant made the required demand upon appellee for the payment of the "unpaid rentals", meaning the P20.00 monthly difference between the rental of P60.00 demanded by appellant and the P40.00 paid monthly by appellee

since October 1957. This, in our opinion, is clearly equivalent to a demand for the payment of a monthly rental of P60.00. Considering that appellee was occupying the premises in question on a month to month basis, it can not be denied that appellant had the right to terminate the lease at the end of any month. The contract between the parties herein must therefore be deemed terminated upon appellee's refusal to pay the P60.00 monthly rental demanded by appellant which does not appear to be exorbitant.

The next question to be resolved is whether appellee is entitled to recover from appellant the sum of P1,180.00 representing the total amount of monthly rental deposits made by him in excess of the monthly rental of P40.00 which he claims to be the rental he was under obligation to pay.

The resolution of the above issue depends upon the effect of the dismissal of Civil Case No. 18658 by the Court of First Instance of Manila on September 6, 1957 on the ground of the therein plaintiff's (appellant therein) failure to prosecute.

Upon the perfection of an appeal from the decision of an inferior court in an unlawful detainer case, assuming that other conditions required by Section 8 of Rule 72, Rules of Court are complied with, the decision of said court is deemed vacated, the case to be tried de novo in the Court of First Instance. Had the order of the latter court of September 6, 1957 been a mere dismissal of the appeal interposed by the defendant in the case, appellant's contention that upon the dismissal the decision of the inferior court was revived, might have some merit. The fact is, however, that what the Court of First Instance dismissed was the case itself. It is obvious, therefore, that thereafter there was nothing left of Civil Case No. 18658 of the Court of First Instance of Manila nor of the original action, namely, Civil Case No. 21154 of the Municipality Court of the same city. In other words, the parties were taken back to the situation obtaining since the detainer case instituted by appellant's deceased husband against appellee was amicably settled by allowing the latter to continue paying the monthly rental of P40.00. As a result, appellee is entitled to recover from appellant the difference between the rental deposits he had made at the rate of P60.00 monthly, and this amount of P40.00 monthly. This situation, however, ended when appellant made upon appellee the demand for, the payment of a monthly rental of P60.00 by means of the letter of demand mentioned in the additional stipulation of facts (Record on Appeal 16-17), the date of which unfortunately is not given. From the date of such demand appellant is legally entitled to a monthly rental of P60.00 until appellee actually vacates the premises. In view of appellee's refusal to pay said monthly rental, appellant was entitled to terminate, as she did terminate, the contract of lease between them. Consequently, the decision appealed from, in so far as it dismisses appellant's action, is reversed and another is hereby rendered ordering appellee to vacate the premises subject matter of this action.

As the date of the demand mentioned heretofore is not available in this record, the present case is ordered remanded to the lower court for further proceedings in accordance with this decision for the purpose of determining the rentals due from appellee to appellant, and the amount to be reimbursed, if any, to the former.

Lastly, as it does not appear that this action is groundless and was instituted maliciously, appellee is not entitled to recover any amount as attorney's fees.

Modified as above indicated, the decision appealed from is affirmed in all other respects.

Bengzon, C. J., Bautista Angelo, Labrador, Reyes, J, B. L., Barrera, Paredes, Regala and Makalintal, JJ., concur.

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