

**ISLAND SAVINGS BANK, PETITIONER-APPELLANT, VS. HON. AMBROSIO M. GERALDEZ PRESIDING JUDGE, BRANCH VII, CITY COURT OF MANILA, AND JOSE H. MENDOZA AND LAURA P. MENDOZA, RESPONDENTS...**

*G.R. No. L-27995. June 28, 1974*

Ponente: MAKALINTAL, C.J.

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**MAKALINTAL, C.J.:**

This is an appeal from the decision of the Court of First Instance of Manila in its Civil Case No. 67866, dismissing the petition for certiorari and prohibition of the herein appellant Island Savings Bank.

On July 20, 1966 the spouses Jose H. Mendoza and Laura P. Mendoza filed in the City Court of Manila a complaint for ejectment against the Island Savings Bank,\* alleging inter alia: that they were the owners of a building located at 445-447 Bustillos Street, Sampaloc, Manila, and the lot on which it was erected; that on March 6, 1965 they leased the ground floor of their building to the defendant for a period of five (5) years from November 1, 1964 at a monthly rental of Eight Hundred (P800.00) Pesos, payable in advance on or before the 5th day of each month; that the defendant failed and refused to pay the rentals due on the leased premises from the latter part of June 1966 up to the date of the filing of the complaint in the sum of P1,250.00 notwithstanding repeated demands; that the defendant likewise failed and refused to vacate the leased premises despite demands for that purpose. The plaintiffs therefore prayed that judgment be rendered ordering the defendant to vacate the leased premises and to pay them the sum of P1,250.00 and, in addition, the sum of P800.00 a month from August 1966 until the defendant vacated the premises, with legal interest on both sums.

On August 2, 1966 the defendant filed its answer. While admitting the due execution of the lease contract it denied any liability for rentals. As special defense it alleged that the plaintiffs had no cause of action on the ground that they had transferred the ownership of the building to it in a verbal agreement which was already partially performed and that the written contract of lease had been novated by another verbal agreement under which the ground floor of the building which was the subject matter of the original contract had been substituted with the lot on which the said building was erected, and the monthly rental of P800.00 had been reduced to P500.00. It also alleged that the city court had no jurisdiction over the subject matter of the case, the issue being one of ownership.

Meanwhile, on November 4, 1966 the Island Savings Bank filed in the Court of First Instance of Rizal a complaint against the spouses Jose H. Mendoza and Laura P. Mendoza,\*\* reiterating the material allegations in its answer in the ejectment case then pending in the City Court of Manila and praying that the defendants be ordered to execute in its favor a notarized deed of sale of the entire building, the ground floor of which was the subject matter of the said ejectment case.

Instead of presenting its evidence in the ejectment case the defendant filed a motion to dismiss on two grounds, namely: (1) that another action between the same parties for the same cause was pending before the Court of First

Instance of Rizal; and (2) that the issue of ownership raised in said action (Civil Case No. 2813-P) was a prejudicial question.

In its order dated November 10, 1966, the city court denied the motion to dismiss for lack of merit, holding "that the mere defense of ownership, which already appears in defendant's answer, by way of special defense, does not divest this Court of its jurisdiction to hear the same." Not satisfied, the defendant moved to reconsider. It alleged, among other things, that the city court erred "in disposing of defendant's motion to dismiss on the issue of lack of jurisdiction and not on whether there is or there is no 'other-suit-pending'". When the defendant was turned down, it filed in the Court of First Instance of Manila a petition for certiorari and prohibition, praying for the following reliefs, namely: (1) to annul the order dated November 10, 1966 of the respondent city court in its Civil Case No. 159987 denying the motion to dismiss, for having been issued in grave abuse of discretion; (2) to order the respondent court to desist from proceeding with the aforementioned ejectment case; and (3) to issue a writ of preliminary injunction upon petitioner's filing the requisite bond.

As prayed for the court a quo issued a writ of preliminary injunction ordering the respondent city court to "refrain from proceeding with the trial of Civil Case No. 50987 x x x."

After the petitioner and the private respondent had submitted their respective memoranda, the court a quo rendered its decision, dated May 31, 1967, dismissing the petition and dissolving the writ of preliminary injunction issued on February 14, 1967. It held that the pendency of the case for specific performance in the Court of First Instance of Rizal was not a ground for the dismissal of the ejectment case and that the remedy of certiorari and prohibition was not proper. Thereupon the petitioner interposed the instant appeal.

This appeal should be dismissed for being moot and academic. It appears from the appellees' brief (pp. 7-8), and is not controverted by the appellant, that after the writ of preliminary injunction restraining the City Court of Manila from proceeding with the ejectment case was dissolved, the said case was finally decided against the defendant (the herein appellant); and from the decision of the city court said defendant appealed to the Court of First Instance of Manila. Under the circumstances the determination of whether or not the city court gravely abused its discretion in denying the motion to dismiss is rendered unnecessary. Moreover, no effectual relief can be granted by this Court since the act sought to be enjoined has been completed.

WHEREFORE, this appeal is hereby dismissed.

Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.  
Teehankee, J., in the result.

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\* Civil Case No. 150987

\*\* Civil Case No. 2813-P

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