

EDUARDO MANLAPAT, PLAINTIFF AND APPELLANT, VS. SIMEON SALAZAR, DEFENDANT AND APPELLEE.*G.R. No. L-8221. January 31, 1956*

Ponente: REYES, A., J.

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This is an appeal from a judgment of the Court of First Instance of Bulacan, dismissing plaintiff's action for the recovery of a fishpond through annulment of certain contracts of lease and sublease. The appeal has been certified to this court on the ground that it involves only questions of law.

The material facts are not in dispute. The fishpond in question formerly belonged to three co-owners who had taken turns in leasing it to 'the same person, Bernardo Enriquez. The last lease was signed in 1931 and was to last "until June 1, 1967." After the death of Bernardo Enriquez, his widow, Esperanza Guillen, subleased the fishpond, first, to Dr. Macario Cuerpo Cruz and thereafter to the present defendant Simeon Salazar, the sublease to the latter to commence from May 81, 1947 and last until May 31, 1967. In 1952, with the co-owners of the fishpond already dead, their sole heir, plaintiff Eduardo Manlapat, brought the present action in the Court of First Instance of Bulacan against the sublessee Simeon Salazar to recover possession of the fishpond, alleging that the sublease to the defendant, as well as the leases executed by plaintiff's predecessors in interest, was null and void. But the court decided that those contracts were valid and dismissed plaintiff's action with costs. Hence, the present appeal, which, however, involves only the sublease to the appellee, the appellant contending that the lower court erred in declaring the same valid and binding.

The appellant impugns the validity of the sublease to the appellee on the theory that it is not really a sublease,—which, under both the old and the new Civil Code, would be valid even though entered into without the consent of the lessors since there was no prohibition against it in the contract of lease—but a veritable assignment of lease, which, in appellant's opinion, is void for want of such consent.

The essential difference between an assignment of lease and a mere sublease is given by Manresa thus:

"* * *En la cesioin al arrendatario transmite en absolute) su derecho, au personalidad desaparece, quedan Bolamente en la relacion juridica dos personas, el arrendador y el eesionario, que se eonvierte en arrendatario. En el subarriendo no deaparece personalidad alguna; hay dos arriendos y dos relaciones juridicas diferentea, aunque intimamente ligadas y relacionadas la una con 1ft otra." (10 Manresa 1950 ed., p. 510.)

To the same effect is the following from Valverde:

"El stibarriendo supone un mleva arrendamiento, eonvirtiendolo al arrendatario en arrendador, pero sin que el subarrendador se desligue por corapleto del arrendamiento primitivo; mientras que en la eesion del arrendamiento, el eesionario se eoloca en lugar del eedente, continuando el arrendamiento en las mismas condiciona y quedando el (arrendatario, en virtud do la cesiyri de su derecho, completamente desligado de responsabilidad con el arrendador. Estos dos contratos se parecenrel primero al arrendamiento, y el segundo a la venta. (Valverde, Tratado de Dereeho Civil Español, Tomo 3, pag. 474.)

To determine then whether a given contract constitutes an assignment of lease and not a mere sublease, the test is whether the lessee has by said contract made an absolute transfer of his interest as such lessee, thus dissociating himself from the original contract of lease, so that, as Manresa would say, his personality disappears and there remain only in the juridical relation two persons, the lessor and the assignee, who is converted into a lessee.

The same test is applied at common law, where the transfer of a leasehold by the lessee is deemed an assignment of lease only if he cedes his entire interest in the estate; whereas, if he retains a reversionary interest, however small, the transfer is deemed a mere sublease. (32 Am. Jur. 290; 51 C. J. S. 553.) So, if the lessee underlets for a period less than the entire term or reserves for himself a reversionary interest in the term, the transaction is a subletting. (51 C. J. S. 555.)

With the above distinction in mind, it seems obvious from an examination of the terms of the document executed by Esperanza Guillen in favor of the appellee—identified in evidence as Exhibit "5"—that the said document is one of sublease. In the first place, the original lease, is, as already stated, to last "until June 1, 1967." On the other hand, the sublease is to last only until May 31 of that year. The sublease is thus for a shorter period than the original lease. A reservation of even so short a period as the last day of the term is enough to make the transfer a sublease. (35 C. J. 990; Davis vs. Morris, 36 NY 569.) Indeed, it is held that "the mere fact that the lessor is to receive a surrender of the premises on the last day of the term prevents the transfer from being an assignment." (Murdock et al. vs. Fishel et al., 121 NYS 624; 35 C. J. 989.) It is true that the sublessor states in Exhibit "5" that her possession under the original lease would last up to May 31, 1967 ("tatagal pa hanggang sa Mayo 31, 1967"), and from this appellant argues that in fixing the term of the sublease so that it would expire on May 31, 1967, the sublessor must have intended to transfer her entire interest in the lease. The argument, however, is based upon mere conjecture. Actually, the sublessor has not transferred her interest for the entire period of the original lease, and this may well be due to a desire to repossess the fishpond earlier so that she could prepare it for delivery to the owner.

The terms of the sublease Exhibit "5", also furnish further proof that the lessee, now sublessor, has not dissociated herself from the original lease and that, as Manresa would say, her personality has not disappeared. Condition No. 2, which binds her to respect the sublease and to pay damages should she again sublease the fishpond to another person, is inconsistent with the idea that she had entirely given up her interest in the estate. Equally inconsistent with this idea are condition No. 3, in which the sublessor binds herself to pay the land taxes on the fishpond and such other taxes as may be exacted by the Government; condition No. 4, which forbids the cutting of any tree in the fishpond without the sublessor's written consent; and lastly, condition No. 5, which requires the sublessee to return the fishpond upon the expiration of the sublease in as good a condition as when he took possession of it. With regard to the condition last named, appellant observes that it does not specify that it is to the sublessor that the fishpond is to be returned by the sublessee. But how could the sublessor determine the condition of the fishpond if the same were not to be returned to her? Moreover, as the contract is between sublessor and sublessee, the return of the property object of the contract would naturally, in the absence of a different stipulation, have to be made to the sublessor.

Notice may also be taken of the fact that the sublessor has, in her contract with the sublessee, used the Tagalog word pabubuwisan (will lease). She says: "* * * aking isasalin, ililipat at pabubuwisan ang aking position at pamumuwisan sa nabtanguit na palaisdaan * * *." This clause clearly means that the lessee is transferring possession of the fishpond under lease to her and renting it (i.e. subleasing it) to the transferee.

It being clear that the contract Exhibit "5" is a sublease, the trial court did not err in considering it as such and in declaring it valid, there being nothing against it in the original contract of lease.

Having arrived at this conclusion, we deem it unnecessary to go into the question of whether the contract embodied in Exhibit "5" would be void or not if considered as an assignment of lease.

Wherefore, the judgment appealed from is affirmed, with costs against appellant.

Parás, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endeneia, JJ., concur.

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