

ONG CHING, PETITIONER, VS. HON. JOSE R. RAMOLETE, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, THE PROVINCIAL SHERIFF OF CEBU, JOSE JAYME, ROSARIO J. SOCO, ADRIANO SOCO, CARMEN...

G.R. No. L-35356. May 18, 1973

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ANTONIO, J.:

Petition for certiorari, with prayer for preliminary injunction, to set aside the order dated July 24, 1972, of respondent Court of First Instance of Cebu, in Civil Case No. R-10866, denying petitioner's motion for reconsideration of the judgment therein and granting the writ of execution.

In a judgment rendered by the respondent court on April 14, 1972, the complaint of petitioner as lessee against private respondents, owners of the leased property as defendants for (a) damages — "for the refusal of the defendants to comply with their obligation to grant a renewal of the contract of lease for another fifteen (15) years, according to the terms and conditions of the original agreement x x x" and (b) for injunction — "to enjoin the defendants from selling the land subject-matter of the lease agreement, without first annotating on the certificate of title the lease agreement between the plaintiff and the defendant," was dismissed, and said party was ordered to vacate the leased premises, surrender the possession thereof to defendants, remove the improvements he constructed thereon, and pay defendants the rentals from October 24, 1968, until the date of the judgment, at P1,680.00 per month, and the sum of P2,000.00 as attorney's fees plus the costs of the suit.

After petitioner (plaintiff) received a copy of the judgment on April 18, 1972, a motion for reconsideration of the said decision on behalf of petitioner was filed with respondent court on May 18, 1972, not by Atty. Candido Vasquez, counsel of record of petitioner, but by one Atty. Higinio Hermosisima. This motion was predicated on two grounds: (1) Under the contract of lease and the supplemental contract of lease, the lease was renewable at the option of the plaintiff under exactly the same terms and conditions as the original contract of lease, and (2) the court had no jurisdiction over defendants' counterclaim for ejectment. This motion for reconsideration, was opposed by the private respondents as defendants in the case, principally on the following grounds: (a) the "motion for reconsideration" having been filed by a new counsel, with no formal appearance in the case and without complying with the requirements of Section 26, Rule 138 of the Revised Rules of Court for substitution of attorneys has no legal effect whatsoever and therefore the filing of such pleading did not suspend the running of the 30 day period to appeal, (b) the contention of plaintiff is without merit as the court has sufficiently shown in its judgment that while the contract of lease may be renewed, it was not under the same terms and conditions of the original lease, and (c) the ejectment of plaintiff from the premises being a necessary and compulsory counterclaim of defendants to plaintiff's action, was properly within the jurisdiction of the court to decide.

In its order of July 24, 1972, the trial court after reiterating its previous findings and construction of the renewal system clause of the lease agreement, denied the motion for reconsideration and ruled that there being no proper substitutions of counsel, the motion filed by Atty. Hermosisima, was without any legal effect and could not have suspended the running of the period for appeal and consequently considered the judgment final and granted the

issuance of a writ of execution.

On July 31, 1972 when the Provincial Sheriff of Cebu proceeded to levy on execution plaintiff's properties pursuant to the writ of execution, petitioner (plaintiff) filed the present petition for certiorari to annul the aforesaid order of the trial court.

On August 17, 1972, We required respondents to file their answer and issued a temporary restraining order to enjoin the enforcement of the challenged order.

The main issues which this Court is called upon to resolve are: (1) whether the filing of the motion for reconsideration with the court below suspended the running of the period within which to appeal; and (2) whether said court has jurisdiction to order petitioner to vacate the premises and surrender the possession thereof to the private respondents.

1. The settled rule is that in order that there may be a valid substitution of attorneys in a given case, there must be (a) a written application for substitution; (b) a written consent of the client; and (c) a written consent of the attorney to be substituted. In case the consent of the attorney to be substituted cannot be obtained, there must at least be proof that notice of the motion for substitution has been served upon him in the manner prescribed by the rules.[1]

The present case, however, does not involve a substitution of attorneys, but merely the employment by petitioner of an additional counsel. True it is, as claimed by respondents, that the motion for reconsideration filed by Atty. Hermosisima gives no indication that he was presenting his motion in collaboration with Atty. Vasquez; but neither would it indicate that by his filing of the pleading in the case, Atty. Hermosisima was replacing Atty. Vasquez as counsel for petitioner. In law it is assumed prima-facie that every attorney who appears in court does so with sufficient authority.[2] The fact that a second attorney enters an appearance on behalf of a litigant does not authorize a presumption that the authority of the first attorney has been withdrawn.[3] There is no question that a party may have two or more lawyers working in collaboration as his counsel in a given litigation. Thus in the case at bar the certificate dated May 16, 1972, executed by Atty. Vasquez, is to the effect that he, with the consent and authority of petitioner (who signified his confirmity in writing) was authorizing Atty. Hermosisima to collaborate with him in the case due to his ill health. While the said certificate was not attached to the motion for reconsideration on May 17, 1972, but was presented in court rather belatedly on June 16, 1972 as an annex to petitioner's "Rejoinder to Opposition to Motion for Reconsideration," respondents have not shown that the recitals of fact contained therein did not reflect the truth. At any rate, this case is different from U.S. vs. Borromeo,[4] Fojas, et al. vs. Navarro,[5] Ramos vs. Potenciano,[6] Baquiran vs. Court of Appeals.[7] Here petitioner's counsel, Atty. Vasquez, not only affirmed his continued connection with the case, but also explained Atty. Hermosisima's appearance as collaborating counsel. While it may be desirable in the interest of an orderly conduct of judicial proceedings, that a counsel for a party should file with the court his formal written appearance in the case, before filing a pleading therein, or mention in said pleading that he is submitting the same in collaboration with the counsel of record, the mere circumstance that such acts were not done does not warrant the conclusion that the pleading filed by such counsel has no legal effect whatsoever.

Respondents also claim that petitioner's motion for reconsideration is pro forma and, therefore, did not toll the period for appeal. A cursory reading of the motion for reconsideration reveals that except for his contention assailing the jurisdiction of the Court on respondents' counterclaim, petitioner merely amplified his arguments in support of his theory that the contract of lease was renewable at the option of the lessee "under exactly the same terms and conditions" as the original contract of lease. Such argument appears to have been already considered, weighed and resolved adversely to petitioner, by the trial court in its decision.

Considering that the motion for reconsideration was filed on the 30th day of the period within which petitioner could appeal from the questioned judgment, it might be useful to ascertain, if the appeal, if allowed, would be meritorious and not a futile exertion of judicial authority.

There are certain facts found by the trial court which militate against the contention of petitioner.[8] The lease contract of October 23, 1953 was drafted and prepared by the lawyer of the petitioner, and although the same was revised on February 15, 1965 for the purpose of clarifying the terms of the original agreement, no explanation has been given why the stipulation in the original lease that the "lessor shall have the option to renew said lease for a like period", was not clarified by adding the phrase "under the same terms and conditions", if it was true that such was the intention of the parties. A distinction between a stipulation to renew a lease and one to extend it for an additional period beyond the original term is usually made. The former usually requires the execution of a new lease, while the latter does not.[9] In any event since the contract was drafted upon the direction of the petitioner, any ambiguity in the option clause should therefore be construed against said party.[10] Apart from this on October 20, 1968, a day immediately prior to his sending of his telegram to Jose Jayme, one of the lessors, advising them of his intention to "exercise the option to renew the lease x x x for a like period of fifteen years" and two days before the expiry date of the lease on October 22, 1963, petitioner had prepared the complaint which he filed in the case at bar. Certainly if he believed in good faith that he had the right to an extension of the lease, why did he prepare the complaint even before knowing the action of the lessors, on the renewal of the lease? Moreover, considering that the area leased was in a commercial zone where it was shown that the real estate assessments had been progressively increasing to such an extent that in 1963 the assessment of said property had risen by 321% (P4,531.50 to P19,080.00), it was certainly improbable that the private respondents would have agreed for an extension of the lease for another period of 15 years at the same measly rental of only P91.60 monthly. Finally, it was shown that Jose Jayme, who signed the 1953 lease agreement as attorney-in-fact of all of the owners, had no express authority to grant an extension of the lease for another period of 15 years.

Under such circumstances it will not serve any useful purpose to allow the appeal since it can not be reasonably expected that "the legal conclusions of the trial court, which are apparently in accordance with law, will be modified substantially to warrant a different result." [11]

Petitioner having raised before the court the issue of the validity of his renewal of the lease and consequently of his right to retain possession of the premises, it is rather late in the day for him now to question the authority of the Court to order him to vacate the premises after declaring that the lease had already expired as it was not lawfully renewed by the parties and therefore his continued possession of the land is an act of unlawful usurpation. The aforesaid order is but the logical and necessary consequence of such judicial declaration. Having invoked the jurisdiction of the trial court to secure an affirmative relief against his opponents, petitioner may not now be allowed to repudiate or question the same jurisdiction after failing to obtain such relief.[12] While jurisdiction of a tribunal may be challenged at any time, sound public policy bars petitioner from so doing after having procured that jurisdiction himself, speculating on the fortunes of litigation.[13]

PREMISES CONSIDERED, the petition for certiorari is hereby dismissed, with costs against petitioner.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Makasiar, and Esguerra, JJ., concur.

Teehankee, J., concurs in the result.

Barredo, J., took no part.

[1] U.S. vs. Borromeo, et al., 20 Phil. 189 [1911]; Ramos, et al. vs. Potenciano, et al., L-19436, Nov. 29, 1963, 9 SCRA 589.

[2] Tan Lua vs. O'Brien, et al., 55 Phil. 53, 60.

[3] Aznar vs. Norris, 3 Phil. 636, 638.

[4] 20 Phil. 189.

[5] L-26365, April 30, 1970, 32 SCRA 476.

[6] 9 SCRA 589.

[7] 2 SCRA 873.

[8] Decision of the Court of First Instance dated April 14, 1972 and its order of July 24, 1972 in Civil Case No. R-10866.

[9] 3 Thompson on Real Property, 362. See also the following:

A distinction between a stipulation to renew a lease and one to extend it for an additional period beyond the original term is usually made. The former usually requires the execution of a new lease, while the latter does not. Whether a provision of a lease constitutes a covenant for renewal or merely an agreement for an extension of the term depends on the intention of the parties as manifested by the lease as a whole, or by their practical construction thereof. (Blanck vs. Kimland Realty Co., 122 Conn. 317, 189 Atl. 176).

A clause in a lease providing for an "extension" operates of its own force to create an additional term, but a clause providing for a "renewal" does not have a similar effect but merely creates an obligation to execute a new lease for the additional term (Arnett vs. Lewis, 37 O.L.A. 71, 45 N.E. [2d] 313; Add Lexington Flying Service, Inc. vs. Andersen's Exr., 239 S.W. [2d] 945).

Where a five-year lease gave the lessee the option of extending the lease for a further term, it was held that the exercise of the option was but a prolongation of the original lease for a further term (Levin vs. Rose, 19 N.E. [2d] 297).

On the other hand, the expression that the lessor covenants to renew the lease indicates the intention of the parties to execute a new instrument (Kollock vs. Scribner, 98 Wis. 104, 73 N.W. 776).

The determination of whether a clause in a lease is a covenant for renewal or one for an extension depends upon the intention of the parties as gathered from the entire instrument. (Freiheit vs. Broch, 98 Conn. 166, 118 Atl. 828; Kozy Theatre Co. vs. Love, 191 Ky. 595, 231 S.W. 249; Edwards-Pickering Co. vs. Rodes, 203 Ky. 95, 261 S.W. 884).

Irrespective of whether a clause in a lease is one for the extension or renewal thereof, its terms and conditions must be sufficiently definite and certain to enable a court to determine what has been agreed upon, and if it fails in this respect it is not enforceable. (Cohare Realty Co. vs. Stilson, 22 Ohio App. 432, 154 N.E. 53).

The foregoing is certainly not inconsistent with our ruling in previous cases that the word "extendible", standing without qualification in a contract of lease, means that the lease may be extended and is equivalent to a promise to extend, made by the lessor to the lessee, and as a unilateral stipulation, obliges the promisor to fulfill his promise (Legarda Koh vs. Ongsiako, 36 Phil. 185; Cruz vs. Alberto, 39 Phil. 991).

[10] Art. 1377, New Civil Code; Asturias Sugar Central vs. The Pure Cane Molasses Co., 57 Phil. 519; Gonzales vs. La Previsora Filipina, 74 Phil. 165.

[11] Lucas vs. Mariano, 44 SCRA 517.

[12] Tijam, et al. vs. Sibonghanoy, et al., 23 SCRA 29, 35-36; Rodriguez vs. Court of Appeals, 29 SCRA 419.

[13] Crisostomo, et al. vs. Court of Appeals, et al., 32 SCRA 54, 58; Libudan vs. Palma, 45 SCRA 17.

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