

EMILIO SY, PETITIONER-APPELLANT, VS. THE HON. JUDGE MANUEL DALMAN AND JOSEFA VDA. DE RAMOS, RESPONDENTS-APPELLEES.

G.R. No. L-19200. February 27, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from the judgment dated August 3, 1961 of the Court of First Instance of Zamboanga del Norte dismissing appellant's petition therein. The case was submitted for decision here without appellees' brief in answer to that of appellant.

Appellee Josef & A, Vda. de Ramos was the applicant in a miscellaneous sales application with the Bureau of Lands over a parcel of land specifically described as Lot No. 345, Dipolog Cadastre, Zamboanga del Norte. On June 13, 1950 she and appellant Emilio Sy entered into a contract whereby the former leased to the latter for a period of five (5) years, renewable for another ten (10) years, the property described in the deed of lease.

The pertinent provision thereof reads:

"That the LESSOR is the absolute owner of Lot No. 345, situated in Rizal Avenue, Dipolog, Zamboanga, and hereby agrees to construct a cine building on the said lot; that said building shall be 112 feet long and 52 feet wide; that said buildings shall have a flooring made of cement; it shall have four (4) flush toilets, (2 upstairs, 1 for men and 1 for women), 2 downstairs, (1 for men and 1 for women); it shall have a balcony and a stage inside said building; it shall have double walling and said walls shall be painted inside and outside; it shall have a room for ticket sellers which a dimension of 2 meters long, 1 meter wide and 8 feet high and it shall contain a fireproof projecting room and the parties hereby agree to adopt and be bound by the following conditions: x x x"

During the existence of the contract of lease appellee's sales application was cancelled by the Bureau of Lands and the land was forfeited in favor of the government in a decision rendered by the Executive Secretary on April 27, 1954 as follows:

"x x x In view thereof, her application is hereby cancelled but she shall be entitled to reimbursement by the successful bidder at public auction the value of the improvement introduced by her. In the absence of a successful bidder and the land in question remains property of the government, the applicant, Mrs. Josefa A. Vda. de Ramos, shall have the right to remove the house at her expense if the Government does not decide to reimburse her for the value thereof."

The land was advertised for sale and in the public auction held on March 31, 1960 was sold to herein appellant as the highest bidder, for the price of P142,000.00. The building in question was assessed at P27,350.00, and pursuant to the decision of the Executive Secretary the parties agreed that appellant should pay the value thereof in five equal annual installments. Appellant then paid the first installment of P5,470.00. The second installment in the same amount was likewise paid on February 24, 1961.

Meanwhile, on March 3, 1960, appellant filed in the Court of First Instance of Zamboanga del Norte Civil Case

No. 1150 for the recovery of expenses for major and minor repairs and other material improvements, plus damages, incurred by him on the moviehouse subject-matter of the lease. Thereafter, appellant did not pay to appellee the subsequent monthly rentals of P250.00 each, despite two separate demands made by the latter on June 12 and 25, 1960. On August 23, 1960 appellee instituted the instant case (Civil Case No. 1261) for unlawful detainer against appellant in the justice of the peace court of Dipolog, Zamboanga del Norte.

Appellant moved to dismiss the complaint on the following grounds: (1) that the complaint stated no valid cause of action; (2) that the court had no jurisdiction over the subject-matter of the complaint; (3) that there was a pending civil action over the same cause of action between the same parties; (4) that the complaint was defective for failure to include all the necessary parties.

On September 8, 1960 the justice of the peace court issued the following order:

"After considering the motion to dismiss filed by counsel for the defendant, the Court finds that the same is not well taken. As shown by the admission of the counsel for the defendant that the latter has only paid the first of the five installments of the purchase price of the movie house which is fixed at P27,350, the defendant is not entitled to claim full and absolute ownership of the building. The Court refrains from further elucidation on this point until such time that this case will be submitted to the Court for the decision on its merits."

Not satisfied with the above-quoted order, appellant filed a petition for certiorari and prohibition with pre-liminary injunction in the Court of First Instance, alleging that the justice of the peace court acted with grave abuse of discretion or in excess of jurisdiction in taking cognizance of the case (Civil Case No. 1261) and reiterating the grounds alleged in its motion to dismiss in the court below.

On August 3, 1961 the Court of first instance rendered its decision, the pertinent portion of which reads:

"Concluding, the Court declares that the justice of the peace court of Dipolog, Zamboanga del Norte, presided over by respondent Manuel D. Dalman, has the exclusive original jurisdiction to try and decide Civil Case No. 1261 for unlawful detainer filed therewith by respondent Josefa Vda. de Ramos against petitioner. Corollary to this is the declaration that respondent Justice of the Peace Manuel D. Dalman has not acted with grave abuse of discretion in issuing his orders in said case, dated September 8, 1960 and October 29, 1960, denying respectively, petitioner's motion for reconsideration of said denegatory order.

Wherefore, judgment is hereby rendered dismissing this action, with costs taxed against petitioner."

Appellant comes to us raising the same issues as those stated in his petition for certiorari in the Court of First Instance. He claims that the justice of the peace court lacked jurisdiction over the subject-matter of the case, considering that the issue of possession is directly interwoven with that of ownership.

It should be noted that in the justice of the peace court appellant, instead of filing his answer to the complaint, moved for its dismissal on the ground that as he was already the owner of the building the court lacked jurisdiction to take cognizance of the case. In ejectment cases what determines jurisdiction of the justice of the peace court is the nature of the action as pleaded in the complaint. Appellant's claim of title over the building would not necessarily defeat jurisdiction vested in said court by the allegations thus pleaded (*Canaynay vs. Sar-miento*, 79 Phil. 36). Otherwise the ends of justice would be frustrated by making the efficacy of an action of forcible entry or detainer depend upon the defendant in all cases. An exception is of course recognized where the evidence adduced at the trial shows that the question of title is actually involved in the litigation and must be resolved in order to decide the question of possession (*Zapanta vs. Bartolome*, 83 Phil. 433; *Savinada vs. Tuason & Co., Inc.*, 83 Phil. 840; *De los Reyes vs. Elepaño*, 83 Phil. 691; *Centeno vs. Gallardo*, L-6165, May 15, 1953). The present case does not fall within the exception, since the trial had not yet started in the justice of the peace court, appellant having immediately filed his motion to dismiss.

Appellant contends that being the successful bidder at the public sale and having chosen to pay the improvement on the land purchased by him he became the owner thereof, and therefore the issue of possession is directly interwoven with his claim of ownership. Such claim, however, is a matter of defense and raises an issue of fact which should be determined from the evidence at the trial. Besides, as stipulated by the parties below, "up to the present (April 27, 1961, which was the date of the stipulation) there has been no award by the Bureau of Lands in favor of the petitioner as a successful bidder..."

Appellant further raises the bar of another action pending, referring to Case No. 1150 in the Court of First instance. The same observations as those already set forth with respect to the claim of ownership apply with equal relevance here.

In any event an order denying a motion to dismiss is interlocutory and the remedy of the unsuccessful movant is to await the judgment on the merits and then appeal therefrom (*Harrison Foundry & Machinery vs. Harrison Foundry Workers' Assn.*, L-18432, June 20, 1963; *Bautista vs. De la Cruz*, L-21107, December 24, 1963; *Arches vs. Bellosillo*, L-23534, May 16, 1967); or, in an action for unlawful detainer, where the jurisdiction of the justice of the peace court is challenged because the issue of ownership is necessarily involved, to raise said issue in the answer and present evidence to support it. The denial of appellant's motion to dismiss, at the stage of the case when said motion was filed, is not a grave abuse of discretion or an excess of jurisdiction to warrant the issuance of the writ prayed for.

The judgment appealed from is affirmed, with costs.

Reyes, J.B.L., Dizon, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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