

MARTIN SAVELLANO, PLAINTIFF AND APPELLEE, VS. PELAGIA M. DIAZ AND PABLO DIAZ, DEFENDANTS AND APPELLANTS.*G.R. No. L-17944. July 31, 1963*

Ponente: PADILLA, J.

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In a complaint filed on 8 March 1957 in the Justice of the Peace Court of Tagum, Davao, plaintiff Martin Savellano alleges and claims, among others, that since 28 December 1954, when defendant Pelagia M. Diaz, widow of the late Jose Machitar, executed a public instrument conveying to him, for and in consideration of the sum of P600, exclusive, absolute and unlimited enjoyment of the use of two hectares of a parcel of land, together with the hemp stalks planted therein, situated in Mawab, Tagum, Davao, registered as Homestead Application No. 192581 (E-100582), until "such time that said defendant Pelagia M. Diaz could return (shall have returned) the consideration of P600.00," he had taken possession of the property and spent for the care and preservation of the hemp stalks therein; that in November or December 1956, without paying back the sum of P600 or redeeming the property, defendant Pelagia M. Diaz and her husband defendant Pablo Diaz, aided by their laborers, forcibly entered upon the parcel of land and took about two piculs of hemp valued at P100; that several times in February and March 1957 they repeated the same act much to his prejudice and damages; and said acts of dispossession had forced him and his son to go several times to Davao City and Magugpo to report the incidents to his counsel and the police of Tagum, incurring an actual travel expense of not less than P100 and also had caused him damages in the sum of not less than P1,000 and exemplary or correctional damages in the sum of not less than P300; and prays that a writ of preliminary injunction be issued against the defendants; that he be restored to the property; that the defendants jointly and severally be ordered to pay him P100 for actual travel expenses incurred in going to and from Mawab, Magugpo, Davao City; P100 for the value of the hemp taken by defendants Pablo Diaz in November or December 1956; P1,000 for moral damages; P300 for exemplary or correctional damages; P500 for attorney's fees; and that he be granted other just and equitable reliefs. On 16 March 1957 the defendants answered, alleging and claiming that defendant Pelagia M. Diaz debt of P600 already had been paid or extinguished by the amount of hemp stalks, cut and harvested by the plaintiff on whom many times they had made demands to render an accounting of the harvest of hemp but who refused to do so, and interposing a counterclaim that the plaintiff's unfounded suit against them had disturbed their peaceful possession of the parcel of land and prejudiced them in their work and caused them damage amounting to P500; that their arrest as a result of a criminal complaint for coercion unjustly filed against them by the plaintiff had caused them damages in the sum of P1,000; that to protect their interest they had engaged the services of counsel for a consideration of P500. After the Justice of the Peace Court had rendered judgment, the case was appealed to the Court of First Instance of Davao where the complaint and answer filed in the Justice of the Peace Court were reproduced (civil case No. 2427). After trial, on 4 August 1960 the Court of First Instance of Davao rendered judgment, the dispositive part of which reads, as follows:

Wherefore, this court hereby renders judgment in favor of the plaintiff and against the defendants, ordering that the former be restored in the actual and physical possession of the land in question, that he be paid actual damages in the amount of P90.00, which represents the value of the products taken by the defendants' from the

land in question in December 1956 and in March, 1957, with costs against the defendants.

On 15 August 1960 the defendants filed a motion for reconsideration, which was denied on 3 September.

The defendants have appealed.

They claim that the court erred in—

* * not dismissing the case, in the light of section 11, Rule 40, of the Rules of Court, then in having it tried in the proper case; and

* * * deciding the case on the basis of allegations not proved in the trial, in favor of the plaintiff.

Section 11 of Rule 40, Rules of Court invoked by the appellants, provides that—

A case tried by an inferior court without jurisdiction over the subject-matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction.

They argue that under the above-quoted rule the Court of First Instance should have converted the action of forcible entry into an action for an accounting of the proceeds of the hemp harvested by the appellee and, in support of the argument, cite the case *Amor vs. Gonzales*, 76 Phil. 481, and *De Guzman vs. Court of Appeals*, 99 Phil., 102; 54 Off. Gaz., 1340.

As this is an action of forcible entry, the point to ascertain is, who was in actual and physical possession of that part of the parcel of land at the time the dispossession complained of took place. The appellants claim that possession of that part of the parcel of land was not transferred to the appellee, but only the right to harvest hemp therein. On the other hand, the latter asserts that possession of that part of the parcel of land together with the right to harvest hemp therein was transferred to him. Appellee's claim is supported by the evidence. The agreement (Exhibit A) executed on 28 December 1954 by and between him and the appellant Pelagia M. Diaz, which is the basis of appellee's claim for the possession of part of the parcel of land in question, reads as follows:

That under the terms of the aforesaid extension contract the principal sum for which the mortgage was made and executed was supposed to have been paid sometime last October 15, 1954 but this was again violated by the aforesaid Mrs. Pelagia Mateo Machitar, hence in order to secure the payment of the said principal sum of SIX HUNDRED PESOS (P600), we have agreed again to extend the payment until such time convenient to the said Mrs. Pelagia Mateo Machitar provided the said Mrs. Machitar gives possession and usufruct to the portion appropriately indicated in the map of the homestead (patented) of her late husband which property is conjugal. This portion so indicated at the back hereof contains about two hectares, more or less, and is given in possession and usufruct together with all improvement contained thereof by the herein Pelagia Mateo Machitar unto the herein Martin Sevellano.[1]

In paragraph 4 of their answer to the complaint for forcible entry, the appellants state that—

* * * The truth of the matter is that long prior to November, 1956, defendants had already served notice of the intention of the owners of the abaca, defendants herein, to withdraw the possession of the same, but this was done orally, or in unwritten words, which the plaintiff completely ignored, as in fact he ignored even the written demands on December 20, 1956, and on February 18, 1957;

* * Defendants could not have committed forcible entry on their own property, with all the proper notification to the plaintiff that he should not exercise possession on the property, for reasons stated to him (pp. 10-11, Record on Appeal).

Moreover, as this is an appeal taken by the appellants to this Court they are deemed to have waived the right to dispute any finding of fact made by the trial court, which is binding on this Court. The only question that they may raise is that of law. The trial court found the following as established by the evidence, to wit:

* * that plaintiff has been in possession of this land since 1954 until the same was forcibly entered by Pablo Diaz in 1956 and has been since then enjoying the produce of said land.

It is a fact then that the appellant had been in actual and physical possession of the parcel of land in question with the right to harvest the hemp therein since 28 December 1954, date of the execution of the agreement Exhibit A, and that in 1956 the appellants forcibly dispossessed him thereof on the belief that the amount of hemp already harvested by him sufficiently had paid the debt of P600 owed by them to him. However, the use of force to recover possession of a property from a legal possessor violates article 536 of the Civil Code, which provides that—

In no case may possession be acquired through force or intimidation as long as there is a possession who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court, if the holder should refuse to deliver the thing.

An action of forcible entry is the remedy available to the appellee who had been deprived of possession of that part of the parcel of land under litigation.[2]

The judgment appealed from is affirmed, with costs against the appellants.

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

[1] In its judgement the trial court said that the "deed of sale as well as the agreement entered into between the plaintiff and the defendant Pelagia Diaz on or about December 28, 1954, were not offered in evidence by the plaintiff in spite of their existence in the record;" however, on pages 58-59, t.s.n. 9 May 1960, it appears that Exhibit A was submitted and admitted in evidence.

[2] Rule 4, section 2, and Rule 72, of the Rules of Court, in relation to article 539 of the Civil Code.

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