

JOSEPA FABIE, PETITIONER, VS. JOSE GUTIERREZ DAVID, JUDGE OF FIRST INSTANCE OF MANILA, NGO BOO SOO AND JUAN GREY, RESPONDENTS.

G.R. No. L-123. December 12, 1945

Ponente: OZAETA, J.

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OZAETA, J.:

The petitioner Josefa Fabie is the usufructuary of the income of certain houses located at 372-376 Santo Cristo, Binondo, and 950-956 Ongpin, Santa Cruz, Manila, under the ninth clause of the will of the deceased Rosario Fabie y Grey, which textually reads as follows:

"NOVENO.—Lego a mi ahijada menor de edad, Maria Josefa de la Paz Pabie, en usufructo vitalicio las rentas de las fincas situadas en la Calle Santo Cristo Numeros 372 al 376 del Distrito de Binondo, de esta Ciudad de Manila, descrita en el Certificado Original de Titulo No. 3824; y en la Calle Ongpin, Numeros 950 al 956 del Distrito de Santa Cruz, Manila, descrita en el Certificado Original de Titulo No. 5030, expedidos por el Registrador de Titulos de Manila, y prohibo enajene, hipoteque, permute o transfiera de algun modo mientras que ella sea menor de edad. Nombro a Serafin Fabie Maeario, mi primo por linea paterna tutor de la persona y bienes de mi ahijada menor, Maria Josefa de la Paz Fabie."

The owner of the Santo Cristo property above mentioned is the respondent Juan Grey, while those of the Ongpin property are other persons not concerned herein. Previous to September 1944 litigation arose between Josefa Fabie as plaintiff and Juan Grey as defendant and the owners of the Ongpin property as intervenors, involving the administration of the houses mentioned in clause 9 of the will above quoted (civil case No. 1659 of the Court of First Instance of Manila). That suit was decided by the court on September 2, 1944, upon a stipulation in writing submitted by the parties to and approved by the court. The pertinent portions of said stipulation read as follows:

"(4) Heretofore, the rents of said properties have been collected at times by the respective owners of the properties, at other times by the usufructuary, and lastly by the defendant Juan Grey as agent under a written agreement dated March 31, 1942, between the owners of both properties and the usufructuary.

"(5) When the rents were collected by the owners, the net amounts thereof were duly paid to the usufructuary after the expenses for real estate taxes, repairs and insurance premiums, including the documentary stamps, on the properties and the expenses of collecting the rents had been deducted, and a certain amount set aside as a reserve for contingent liabilities. When the rents were collected by the usufructuary, she herself paid the expenses aforesaid. When the rents were collected by the defendant Juan Grey under the agreement of March 31, 1942, the net amounts thereof were duly paid to the usufructuary, after deducting and setting aside the items aforesaid, monthly, until the month of October 1943, when the usufructuary refused to continue with the agreement of March 31, 1942.

"II. The parties hereto jointly petition the Court to render judgment adopting the foregoing as finding of facts and disposing that:

"(8) Beginning with the month of September 1944, the usufructuary shall collect all the rents of both the Sto. Cristo and the Ongpin properties.

"(9) The usufructuary shall, at her own cost and expense, pay all the real estate taxes, special assessments, and insurance premiums, including the documentary stamps, and make all the necessary repairs on each of the properties, promptly when due or, in the case of repairs, when necessary, giving immediate, written notice to the owner or owners of the property concerned after making: such payment or repairs. In case of default on the part of the usufructuary, the respective owners of the properties shall have the right to make the necessary payment, including penalties and interest, if any, on the taxes and special assessments, and the repairs, and in that event the owner or owners shall be entitled to collect all subsequent rents of the property concerned until the amount paid by him or them and the expenses of collection are fully covered thereby, after which the usufructuary shall again collect the rents in accordance herewith.

"(10) The foregoing shall be in effect during the term of the usufruct and shall tie binding on the successors and assigns of each of the parties.

"(11) Nothing herein shall be understood as affecting any right which the respective owners of the properties have or may have as such and which is not specifically the subject of this stipulation."

In June 1945 Josefa Fabie commenced an action of unlawful detainer against the herein respondent Ngo Boo Soo (who says that his correct name is Ngo Soo), alleging in her amended complaint that the defendant is occupying the premises located at 372-376 Santo Cristo on a month-to month rental payable in advance not later than the 5th of each month; that she is the administratrix and usufructuary of said premises; "that the defendant offered to pay P300 monthly rent payable in advance not later than the 5th of every month, beginning the month of April 1945, for the said premises including the one door which said defendant, without plaintiff's consent and contrary to their agreement, had subleased to another Chinese, but plaintiff refused, based on the fact that the herein plaintiff very badly needs the said house to live in, as her house was burned by the Japanese on the occasion of the entry of the American liberators in the City and which was located then at No. 38 Flores, Dominga, Pasay; that defendant was duly notified on March 24 and April 14, 1945, to leave the said premises, but he refused"; and she prayed for judgment of eviction and for unpaid rentals.

The defendant answered alleging that he was and since 1908 had been a tenant of the premises in question, which he was using and had always used principally as a store and secondari'y for living quarters; that he was renting it from its owner and administrator Juan Grey; "that plaintiff is merely the usufructuary of the income therefrom, and by agreement between her and said owner, which is embodied in a final judgment of the Court of First Instance of Manila, her only right as usufructuary of the income is to receive the whole of such income; that she has no right or authority to eject tenants, such right being in the owner and administrator of the house, the aforesaid Juan Grey, who has heretofore petitioned this Court for permission to intervene in this action; that plaintiff herein has never had possession of said property; that defendant's lease contract with the owner of the house is for 5-year period, with renewal option at the end of each period, and that his present lease is due to expire on December 31, 1945 * * *; that on June 1, 1945, defendant made a written offer to plaintiff to compromise and settle the question of the amount of rent to be paid by defendant * * * but said plaintiff rejected the same for no valid reason whatever and instituted the present action; that the reason plaintiff desires to eject defendant from the property is that she wishes to lease the same to other persons for a higher rent, ignoring the fact that as usufructuary of the income of the property she has no right to lease the property; that the defendant has subleased no part of the house to any person whomsoever."

Juan Grey intervened in the unlawful detainer suit, alleging in his complaint in intervention that he is the sole and absolute owner of the premises in question; that the plaintiff Josefa Fabie is the usufructuary of the income of said

premises; that the defendant Ngo Soo is the tenant of said premises by virtue of a contract between him and the intervenor which will expire on December 31, 1945, with the option to renew it for another period of five years from and after said date; that under the agreement between the intervenor and the plaintiff Josefa Fabie in civil case No. 1659 of the Court of First Instance of Manila, which was approved by the court and incorporated in its decision of September 2, 1944, the only right recognized in favor of Josefa Fabie as usufructuary of the income of said premises is to receive the rents therefrom when due; and that as usufructuary s'he has no right nor authority to administer the said premises nor to lease them nor to evict tenants, which right and authority are vested in the intervenor as owner of the premises.

The municipal court (Judge Mariano Nable presiding) found that under paragraph 9 of the stipulation incorporated in the decision of the Court of First Instance of Manila in civil case No. 1659, the plaintiff usufructuary is the administratrix of the premises in question, and that the p'aintiff had proved her cause. Judgment was accordingly rendered ordering the defendant Ngo Soo to vacate the premises and to pay the rents at the rate of P137.50 a month beginning April 1, 1945. The complaint in intervention was dismissed.

Upon appeal to the Court of First Instance of Manila the latter (thru Judge Arsenio P. Dizon) dismissed the case for the following reason: "The main issue * * * is not a mere question of possession but precisely who is entitled to administer the property subject matter of this case and who should be the tenant, and the conditions of the lease. These issues were beyond the jurisdiction of the municipal court. This being the case, this Court, as appellate court, is likewise without jurisdiction to take cognizance of the present case." A motion for reconsideration filed by the plaintiff was denied by Judge Jose Gutierrez David, who sustained the opinion of Judge Dizon.

The present original action was instituted in this Court by Josefa Fabie to annul the order of dismissal and to require the Court of First Instance to try and decide the case on the merits. The petitioner further prays that the appeal of the intervenor Juan Grey be declared out of time on the ground that he receive copy of the decision on August 3 but did not file his1 notice of appeal until August 25, 1945.

- The first question to determine is whether the action instituted by the petitioner Josefa Fabie in the municipal court is a purely possessory action and as such within the jurisdiction of said court, or an action founded on property right and therefore beyond the jurisdiction of the municipal court. In other words, is it an action of unlawful detainer within the purview of section 1 of Rule 72, or an action involving the title to or the respective interests of the parties in the property subject of the litigation?

Said section 1 of Rule 72 provides that "a landlord, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such landlord, vendor, vendee, or other person, may, at any time within one year after such unlawful deprivation or withholding of possession, bring an action in the proper inferior court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs."

It is admitted by the parties that the petitioner Josefa Fabie is the usufructuary of the income of the property in question and that the respondent Juan Grey is the owner thereof. It is likewise admitted that by virtue of a final judgment entered in civil case No. 1659 of the Court of First Instance of Manila between the usufructuary and the owner, the former has the right to collect all the rents of said property for herself with the obligation on her part to pay all the real estate taxes, special assessments, and insurance premiums, and make all the necessary repairs thereon, and in case of default on her part the owner shall have the right to do all those things, in which event he shall be entitled to collect all subsequent rents of the property concerned until the amount paid by him and the

expenses of collection are fully satisfied, after which the usufructuary shall again collect the rents. There is therefore no dispute as to the title to or the respective interests of the parties in the property in question. The naked title to the property is admittedly in the respondent Juan Grey, but the right to all the rents thereof, with the obligation to pay the taxes and insurance premiums and make the necessary repairs, is, also admittedly, vested in the usufructuary, the petitioner Josefa Fabie, during her lifetime. The only question between the plaintiff and the intervenor is: Who has the right to manage or administer the property—to select the tenant and to fix the amount of the rent? Whoever has that right has the right to the control and possession of the property in question, regardless of the title thereto. Therefore, the action is purely possessory and not one in any way involving the title to the property. Indeed, the averments and the prayer of the complaint filed in the municipal court so indicate, and as a matter of fact the defendant Ngo Soo does not pretend to be the owner of the property, but on the contrary admits to be a mere tenant thereof. We have repeatedly held that in determining whether an action of this kind is within the original jurisdiction of the municipal court or of the Court of First Instance, the averments of the complaint and the character of the relief sought are primarily to be consulted; that the defendant in such an action cannot defeat the jurisdiction of the justice of the peace or municipal court by setting up title in himself; and that the factor which defeats the jurisdiction of said court is the necessity to adjudicate the question of title. (*Mediran vs. Villanueva*, 37 Phil., 752, 759; *Medel vs. Militante*, 41 Phil., 52G, 529; *Sevilla vs. Tolentino*, 51 Phil., 333; *Supia and Batioco vs. Quintero and Ayala*, 59 Phil., 312; *Lizo vs. Carandang*, G. R. No. 47833, 2 Off. Gaz., 302; *Aguiar vs. Gabrera and Flameiio*, G. R. No. 49129.)

The Court of First Instance was evidently confused and led to misconstrue the real issue by the complaint in intervention of Juan Grey, who, allying himself with the defendant Ngo Soo, claimed that he is the administrator of the property with the right to select the tenant and dictate the conditions of the lease, thereby implying that it was he and not the plaintiff Josefa Fabie who had the right to bring the action and oust the tenant if necessary. For the guidance of that court and to obviate such confusion in its disposal of the case on the merits, we deem it necessary and proper to construe the judgment entered by the Court of First Instance of Manila in civil case No. 1659, entitled "*Josefa Fabie and Jose Carandang, plaintiffs, vs. Juan Grey, defendant, and Nieves G. Vda. de Grey, et al., intervenors-defendants*," which judgment was pleaded by the herein respondents Juan Grey and Ngo Soo in the municipal court. According to the decision, copy of which was submitted to this Court as Appendix F of the petition and as Annex 1 of the answer, there was an agreement, dated March 31, 1942, between the usufructuary Josefa Fabie and the owner Juan Grey whereby the latter as agent collected the rents of the property in question and delivered the same to the usufructuary after deducting the expenses for taxes, repairs, insurance premiums, and the expenses of collection; that in the month of October 1943 the usufructuary refused to continue with the said agreement of March 31, 1942, and thereafter the said case arose between the parties, which by stipulation approved by the court was settled among them in the following manner: Beginning with the month of September 1944 the usufructuary shall collect all the rents of the property in question; shall, at her own cost and expense, pay all the real estate taxes, special assessments, and insurance premiums, including the documentary stamps, and make all the necessary repairs on the property; and in case of default on her part the owner shall have the right to do any or all of those things, in which event he shall be entitled to collect all subsequent rents until the amounts paid by him are fully satisfied, after which the usufructuary shall again collect the rents. It was further stipulated by the parties and decreed by the court that "the foregoing shall be in effect during the term of the usufruct and shall be binding on the successors and assigns of each of the parties."

Construing said judgment in the light of the ninth clause of the will of the deceased Rosario Fabie y Grey, which was quoted in the decision and by which Josefa Fabie was made the usufructuary during her lifetime of the income of the property in question, we find that the said usufructuary has the right to administer the property in question. All the acts of administration—to collect the rents for herself, and to conserve the property by making all

necessary repairs and paying all the taxes, special assessments, and insurance premiums thereon—were by said judgment vested in the usufructuary. The pretension of the respondent Juan Grey that he is the administrator of the property with the right to choose the tenants and to dictate the conditions of the lease is contrary to both the letter and the spirit of the said clause of the will, the stipulation of the parties, and the judgment of the court. He cannot manage or administer the property after all the acts of management or administration have been vested by the court, with his consent, in the usufructuary. He admitted that before said judgment he had been collecting the rents as agent of the usufructuary under an agreement with the latter. What legal justification or valid excuse could he have to claim the right to choose the tenant and fix the amount of the rent when under the will, the stipulation of the parties, and the final judgment of the court it is not he but the usufructuary who is entitled to said rents? As long as the property is properly conserved and insured he can have no cause for complaint, and his right in that regard is fully protected by the terms of the stipulation and the judgment of the court above mentioned. To permit him to arrogate to himself the privilege to choose the tenant, to dictate the conditions of the lease, and to sue when the lessee fails to comply therewith, would be to place the usufructuary entirely at his mercy. It would place her in the absurd situation of having a certain indisputable right without the power to protect, enforce, and fully enjoy it.

One more detail needs clarification. In her complaint for desahucio Josefa Fabie alleges that she needs the premises in question to live in, as her former residence was burned. Has she the right under the will and the judgment in question to occupy said premises herself? We think that, as a corollary to her right to all the rent, to choose the tenant, and to fix the amount of the rent, she necessarily has the right to choose herself as the tenant thereof, if she wishes to; and, as long as she fulfills her obligation to pay the taxes and insure and conserve the property properly, the owner has no legitimate cause to complain. As Judge Nable of the municipal court said in his decision, "the pretension that the plaintiff, being a mere usufructuary of the rents, cannot occupy the property, is illogical if it be taken into account that that could not have been the intention of the testatrix."

We find that upon the pleadings, the undisputed facts, and the law the action instituted in the municipal court by the petitioner Josefa Fabie against the respondent Ngo Soo is one of unlawful detainer, within the original jurisdiction of said court, and that therefore Judges Dizon and Gutierrez David of the Court of First Instance erred in holding otherwise and in quashing the case upon appeal.

- The next question to determine is the propriety of the remedy availed of by the petitioner in this Court. Judging from the allegations and the prayer of the petition, it is in the nature of certiorari and mandamus, to annul the order of dismissal and to require the Court of First Instance to try and decide the appeal on the merits. Under section 3 of Rule 67, when any tribunal unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, it may be compelled by mandamus to do the act required to be done to protect the rights of the petitioner. If, as we find, the case before the respondent judge is one of unlawful detainer, the law specifically requires him to hear and decide that case on the merits, and his refusal to do so would constitute an unlawful neglect in the performance of that duty within section 3 of Rule 67. Taking into consideration that the law requires that an unlawful detainer case be promptly decided (sections 5 and 8, Rule 72), it is evident that an appeal from the order of dismissal would not be a speedy and adequate remedy; and under the authority of *Cecilio vs. Belmonte* (48 Phil., 243, 255), and *Aguilar vs. Cabrera and Flamenio* (G. R. No. 49129), we hold that mandamus lies in this case.

- The contention of the petitioner that the appeal of the intervenor Juan Grey was filed out of time is not well founded: Although said respondent received copy of the decision of the municipal court on August 3, 1945, according to the petitioner (on August 6, 1945, according to the said respondent), it appears from the sworn

answer of the respondent Ngo Soo in this case that on August 8 he filed a motion for reconsideration, which was granted in part on August 18. Thus, if the judgment was modified on August 18, the time for the intervenor Juan Grey to appeal therefrom did not run until he was notified of said judgment as modified, and since he filed his notice of appeal on August 23, it would appear that, his appeal was filed on time. However, we observe in this connection that said appeal of the intervenor Juan Grey, who chose not to answer the petition herein, would be academic in view of the conclusions we have reached above that the rights between him as owner and Josefa Fabie as usufructuary of the property in question have been definitely settled by final judgment in civil case No. 1659 of the Court of First Instance of Manila in the sense that the usufructuary has the right to administer and possess the property in question, subject to certain specified obligations on her part.

The orders of dismissal of the respondent Court of First Instance, dated September 22 and October 31, 1945, in the desahucio case (No. 71149) are set aside that court is directed to try and decide the said case on the merits; with the costs hereof against the respondent Ngo Soo.

Moran,, C. J., Paras, Jaranilla, Feria, De Joya, Pablo, Perfecto, Bengzon, and Briones, JJ., concur.

CONCURRING

HILADO, J.,

I concur on the sole ground that, in my opinion, the amended complaint, dated July 12, 1945, filed by plaintiff in the Municipal Court of Manila, expressly alleges an agreement between her and defendant Ngo Boo Soo regarding the leasing of the premises in question, and that said amended complaint contains further allegations which, together with the allegations of said agreement, under a liberal construction (Rule 1, section 2, Rules of Court), would constitute a prima facie showing that the case is one of unlawful detainer. Of course, this is only said in view of the allegations of the amended complaint, without prejudice to the evidence which the parties may adduce at the trial in the merits, in view of which the court will judge whether or not, in point of fact, the case is one of unlawful detainer.

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