

YU PHI KHIM, UY EK CHIONG AND TENG TECK, PETITIONERS, VS. RAFAEL AMPARO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, THE SHERIFF OF MANILA, VICENTA P. VDA. DE LIM AND ISABEL...*G.R. No. L-3103. May 22, 1950*

Ponente: MONTEMAYOR, J.

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Under a "Lease Agreement", annex A, in July, 1947, Yu Phi Khim, Uy Ek Chiong, and Teng Teck, as lessees, occupied a lot with an area of approximately 550 square meters at 809, 811, 813 Ilaya street, identified as block No. 2705, lot No. 2 in the district of Tondo, Manila, belonging to Vicenta P. Vda. de Lim and Isabelo P. Lim, as lessors. On April 16, 1948, the lessors filed with the Municipal Court of Manila a second amended complaint for detainer and ejectment asking that the lessees vacate the premises and turn them over to the possession of the lessors. Judgment was rendered in favor of the lessors ordering the lessees to vacate the premises and to pay P1,200 to the lessors monthly as rentals beginning July 1, 1947, up to the time they finally vacated the place, with costs. The lessees appealed the case to the Court of First Instance where upon their failure to deposit the corresponding rent for the month of May, 1948, having made said deposit eleven (11) days after the date fixed by the law, on motion of the lessors-plaintiffs, said Court of First Instance issued an order of execution, Annex F, to enforce the judgment of the Municipal Court. A motion for reconsideration of said order was subsequently denied by the same court. Lessees as petitioners have filed the present petition for certiorari with preliminary injunction to this Court seeking to annul the order for the execution of the judgment of the Municipal Court on the ground that said court acted in excess of or with abuse of its discretion.

If this were an ordinary case for detainer or ejectment pending appeal in the Court of First instance where an order for the execution of judgment is issued due to failure of the appellant to make the monthly deposits of the rent, under the facts already stated, a petition for certiorari would summarily be denied on the ground that the law is clear and this court has repeatedly interpreted it to be that the legal provisions requiring the deposit of monthly rentals within a certain period pending appeal, are mandatory, and that failure to comply with them, vested in the appellate court the duty to enforce judgment upon petition of the appellee.

However, the present case is not so simple and the facts are rather involved. We shall state those which we deem necessary for an intelligent appraisal and comprehension of the case. As already stated, in July, 1947, the parties entered into a contract or agreement of lease. The most important provisions of the lease agreement are the following: The term of the lease of the lot in question was five (5) years from July 1, 1947; the rental was P1,200 monthly, payable in advance within the first five days of each and every month, and that overdue rentals shall earn interest at the rate of 1 per cent per month from the first of the respective months to date of payment; the lessees were to construct on the lot a two-story building,—the ground floor to be of brick and/or adobe stone and the upper floor of timber under galvanized roofing, which building will have to be insured in a sum not less than P50,000 while building is under construction and after its termination and during the lifetime of the lease, the

proceeds of the insurance policy in case of destruction to be applied to the reconstruction of the building or the construction of a new one of the same kind; the lessees will not sub-lease the premises or any portion thereof without the written consent of the lessors first secured, and finally, that any and all buildings as well as other improvements erected, constructed or placed on the premises, shall at the termination of the lease, become the exclusive property of the lessors without any obligation, on their part to indemnify the lessees. The lessees claim that the building they constructed on the premises cost them at least P75,000. This would appear to be a reasonable estimate considering the fact as already stated, that one of the terms of the lease contract was for its insurance at an amount not less than P50,000.00.

After a careful consideration of this case, all the members of this Court who are taking part are agreed that the petition for certiorari should be granted, altho they differ as to the reason or reasons for granting the same. Some members hold the view that inasmuch as according to the terms of the lease, the building belonging to the lessees, constructed on the lot, will not become the property of the lessors until the termination of the lease in July, 1952, and considering that in the original action brought in the Municipal Court in 1948, the lessors demanded as relief that the lessees vacate the premises and turn them over to the lessors, the result would be prematurely depriving the lessees of their right and interest in the building. In other words, the said action may well be regarded as one involving title to or interest in real property or real estate, cognizable only by a Court of First Instance. Under this view, the Municipal Court had no jurisdiction over the case; neither had the Court of First Instance appellate jurisdiction to entertain the appeal, consequently, all proceedings in said Court of First Instance, including the order of execution of the judgment are all null and void and therefore, the writ of certiorari should be granted because of the trial court's lack of jurisdiction.

Other members of the Court, however, are of the belief that the action in the Municipal Court had for its purpose not the forfeiture of the building by the lessees in favor of the lessors but the removal of said building and the restoration of the lot in its former status and condition to the lessors in which case, it would be a simple case of detainer or ejectment with the result that both the Municipal Court and the Court of First Instance had original and appellate Jurisdiction, respectively. Under the second view, the lessors-appellees were perfectly warranted in asking for execution of the judgment appealed from due to the failure of the appellants to make the deposit of the monthly rent on time. The remaining question to be decided is whether the appellants had any valid defense to the petition for execution.

The defense of appellants-petitioners interposed not only before us but also before the Court of First Instance, was that their failure to make deposit on time was due to a mistake; that they were under the belief that belated or delayed deposits were permissible as long as they paid interest pursuant to the provisions of the lease agreement already mentioned, to the effect that overdue rentals were to earn interest at the rate of 1 per cent per month. In support of this defense, petitioners in their printed brief state that the rental for the period from January to June, 1948, inclusive amounting to P7,200 which should have been paid in advance was delayed, and that for such delay, the sum of P36 as interest was paid to and received on behalf of the lessors. That agreement or arrangement was of course applicable only to the regular, extra-judicial payment of rentals during the life of the lease. It cannot apply to the deposit in court of rentals pending appeal, for as already mentioned, the provisions of law regarding this point, are clear and explicit, and without regard to the agreement of the parties as regards ordinary payment of rentals.

However, we are willing to believe that the lessees-appellants committed an honest mistake and were led into believing that because of the terms of the lease agreement, they were also allowed to make belated deposits of rents in court provided that they paid the corresponding interest.

Moreover, it is hardly reasonable to say that the appellants would be negligent in making the deposit in court of

the rental for the month of May, knowing that by such neglect, and under one view entertained by some members of the Court, they were going to lose not only the possession of the lot but also that of their new seventy-five thousand peso building, including title thereto; or, under the other view, that they (appellants) would be ordered to tear the building down and remove the materials, both of which alternatives would be extremely onerous. Besides, the loss of the building in favor of the appellees would be equivalent to a forfeiture, and forfeitures are not favored either in law or in equity. A forfeiture cannot be had on grounds other than those specified in the contract (17 C.J.S., section 407, pp. 894, 896). Under the contract of lease, the only ground for forfeiture of the building or construction in favor of the lessors is provided for in paragraph 6 of said agreement which reads as follows:

"6. It is also agreed that if after lessees shall have started construction on the leased premises, lessees should decide not to continue the construction, or if for any reason the construction is abandoned for a period of one month, then all improvements, including materials, placed or erected on the leased premises shall also become the exclusive property of lessors, without any obligation on lessors' part to pay lessees for such improvements and materials, and shall entitle lessors to rescind this agreement."

The contingency envisaged in the above quoted paragraph never took place.

Furthermore, it has been held by this Court that applying the provisions of Rule 38 of the Rules of Court (Bantug vs. Roxas, 40, Off.Gaz., 276-277; Zamora vs. Dinglasan, 43 Off.Gaz., 1627; and Cunanan et al. vs. Rodas, 44 Off.Gaz., 4927) that delayed deposits in court of monthly rents may be excused if due to fraud, error or excusable negligence. Under this doctrine, the motion for execution of Judgment should have been denied by the trial court.

In conclusion, we hold that whether we look at the action originally brought in the Municipal Court, as involving not only ejectment, but also title to and interest in real property consisting of the P75,000 building on the lot in question in which case, the Municipal Court and the Court of First Instance had no original and appellate jurisdiction, respectively, or whether we view it as a simple suit for ejectment in which case, the respondent court had jurisdiction but abused it in ordering execution of the judgment pending appeal because the appellants were eleven days delayed in making the deposit of the rent for one month, due to a mistake or error, we have to reverse as we hereby reverse the order of execution of judgment, annex F. Petition for certiorari, granted, with costs. So ordered.

Ozaeta, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

OZAETA, J.:

Mr. Justice Moran, Mr. Justice Paras and Mr. Justice Padilla voted for the granting of the petition.

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