

**ANASTADLO T, TEODORO, JR., PLAINTIFF AND APPELLANT, VS.
ARMANDO MLRASOL, DEFENDANT AND APPELLEE.***G.R. No. L-8934. May 18, 1956*

Ponente: LABRADOR, J.

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Appeal against an order dismissing the complaint. On November 20, 1952, defendant leased to plaintiff a parcel of land situated along Taft Avenue, Ermita, Manila, for a monthly rental of P490, payable on or before the fifth day of each month. The contract provides that the term of the lease is two years, beginning on October 1, 1952, which may be extended for Another period not exceeding two years with the written consent of both parties. (Par. 2, Exh. A of Exh. 1, p. 24, Record on Appeal.)

On October 15, 1954, defendant wrote plaintiff that the lease expired on October 1, 1954, and that as the latter has lost interest in renewing the same and the retention by the lessee will mean a great financial loss to the owner, defendant is giving plaintiff notice of the termination of the contract. (Par. 2, Complaint, p. 2, Record on Appeal.)

It is alleged in plaintiff's complaint that it is not true that plaintiff has lost interest in the renewal of the lease contract; that as defendant allowed plaintiff to choose to continue the lease for another two years, defendant is now estopped from denying that the said period had actually been extended for another period of two years; and that plaintiff has already paid defendant a considerable sum of money, besides spending another big sum for the improvements on the land. Plaintiff prays that the court fix a longer term for the lease, or rather extend the lease for another period of two years and that defendant be also required to pay plaintiff P10,000 as indemnity for moral damages, because defendant's wife had stated that a check issued by the plaintiff had been dishonored, such statement having been made for the purpose of affecting adversely plaintiff's business. '

Upon receipt of the summons, defendant promptly filed a motion to dismiss the complaint on the following grounds: that the court has no jurisdiction to graift the remedy prayed for in the complaint that there is another action pending between the same parties and for the same cause; that the complaint states no cause of action against defendant; and that plaintiff's claim can not be enforced because the same is barred by the Statute of Frauds. In connection with the allegation that another action is pending between the same parties and for the same cause, a copy of a complaint for ejectment filed by the defendant against plaintiff in the Municipal Court of Manila on December 20, 1954, was attached as Exhibit 1. The complaint for ejectment alleges that the lease was terminated on October 1, 1954, and that even if the contract could be extended for another period of two years the same had already expired on December 20, 1954.

In his reply to the motion for dismissal, plaintiff argues that as the ejectment suit in the Municipal Court of Manila was filed later than plaintiff's action in the Court of First Instance, the former must be dismissed; that the plaintiff is claiming moral damages for P10,000, and this must be determined in the Court of First Instance; and that by the letter that the defendant has sent plaintiff, the defendant is estopped from denying that the contract of lease has been extended for another period of two years. The trial court, after considering a rejoinder of defendant to

plaintiff's reply, sustained the motion for dismissal on the ground that in view of the filing of the action for ejectment or unlawful detainer, all matters alleged in the plaintiff's complaints could be decided therein. After the denial of plaintiff's motion for the reconsideration of the order, plaintiff appealed to this Court.

There is no doubt in our mind that the order of dismissal appealed from should be sustained. The real issue between the parties is whether or not the plaintiff-appellant should be allowed to continue occupying the land under the terms of the lease contract. This is the subject matter of the action for unlawful detainer filed by defendant in the Municipal Court, and it is also the main or principal purpose of this Action. As we have held in the case of *Pue, et al. vs. Gonzales*, 87 Phil., 81 and in the recent case of *Lim Si vs. Lim*, 98 Phil., 856, the right of a lessee to occupy the land leased against the lessor should be decided under Rule 72 of the Rules of Courts. The mere fact that the unlawful detainer or ejectment case was filed later did not deter us from applying this ruling in the case of *Lim vs. Lim*, supra.

In case at bar, we are led to the belief that the present action in the Court of First Instance was prompted by a desire on plaintiff's part to anticipate the action for unlawful detainer, the probability of which was apparent from the letter of the defendant to the plaintiff advising the latter that the contract of lease expired on October 1, 1954. The defendant evidently desired to give plaintiff sufficient time to leave the premises because no action for unlawful detainer was filed immediately after the giving of the notice of the expiration of the lease. But plaintiff took advantage of defendant's delayed unlawful detainer suit to file this case in the Court of First Instance in anticipation of the action for unlawful detainer, in order perhaps that he, may claim that the action in the Court of First Instance was prior to the unlawful detainer case, and, therefore, should enjoy preference over the action filed in the Municipal Court.

It is to be noted that the Rules do not require as a ground for dismissal of a complaint that there is a prior pending action. They provide that there is a pending action, not a pending prior action. The fact that the unlawful detainer suit was of a later date is no bar to the dismissal of the present action. We find, therefore, no error in the ruling of the court a quo that plaintiff's action should be dismissed on the ground of the pendency of another more appropriate action between the same parties and for the same cause.

It is also asserted by appellant that there is no identity between the unlawful detainer case filed by defendant and the case at bar, first because this one is for specific performance or for declaratory relief and second, this suit also includes a demand for moral damages in the sum of P10,000, both of which remedies may not be within the municipal court's jurisdiction to try and decide. In answer it may be stated that, be that as it may, plaintiff's action for declaratory relief is improper; this action is meant only for those cases where a contract is desired to be construed prior to its breach because of an impending controversy, that the parties thereto may be informed of their rights thereunder. In the case at bar, the lease contract had already expired and there has already been a breach thereof, hence the action for a declaratory judgment is no longer proper.

"Sec. 2. Before Breach.—A contract or statute may be construed before there has been a breach thereof." (Rule 66, Rules of Court.)

Besides, cognizance of actions for declaratory relief is vested in the sound discretion of the court, which may dismiss the action if a declaration is no longer necessary.

"Sec. 6. Discretionary.—The court may refuse to exercise the power to declare rights and to construe instruments in any case where a decision under it would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration, or construction is not necessary and proper at the time under all the circumstances." (Id.)

There is no longer any need for the action, even if proper, because the matter could be threshed out in the

unlawful detainer suit that the defendant had institute in the municipal court.

It is not true that plaintiff's supposed rights to an extension can not be decided in the unlawful detainer suit. If the plaintiff has any right to the extension of the lease at all, such right is a proper and legitimate issue that could be raised in the unlawful detainer case, because it may be used as a defense to the action. Plaintiff suit, therefore, violates the principle prohibiting multiplicity of suits, as the court a quo correctly ruled.

The claim for damages is also invoked as a ground for allowing the continuance of the action. We note that this supposed cause of action is merely an incident of the main question of whether or not plaintiff should be allowed to continue the lease for two years more.] It is not alleged as an independent cause of action. It is not set forth in a paragraph different from the others as the Rules require. If plaintiff wants to insist on these damages, he may do so clearly and plainly in another action; he may not assert it in the action for declaratory relief, as an excuse or reason for continuing his said suit for declaratory relief, which is improper under the circumstances.

The order of dismissal may also be sustained on another ground, namely that on the face of the complaint the plaintiff has no cause of action against defendant. The contract expressly provides that the lease is for two years from October 1, 1952, but may be extended by written consent of both parties for another two years. But there is no allegation in the complaint that this period of time was extended by the written consent of the parties.

The allegation in the complaint that the defendant's assumption that plaintiff was no longer interested in renewing the lease is false and estops defendants from claiming that the lease has been terminated is either a conclusion of law or it does not create any right of action in favor of plaintiff for the extension of the lease. As the contract of lease can be extended, according to its terms, only by written consent of the parties, no right for extension can arise without such written consent. There is no allegation that such written consent was ever, given. Hence there is no sufficient ground alleged in the complaint for the plaintiff to be entitled to the extension. The order of dismissal was, therefore, further justified by the fact that plaintiff's complaint alleges no cause of action against defendant.

For the foregoing considerations, the judgment appealed from is hereby affirmed, with costs against plaintiff-appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Jugo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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