

INES CONSOLACION CUYUGAN, PLAINTIFF AND APPELLEE, VS. JOSE P. DIZON, DEFENDANT AND APPELLANT.

G.R. No. L-208. August 29, 1947

Ponente: TUASON, J.

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TUASON, J.:

Plaintiff brought this action in the Court of First Instance of Pampanga on November 25, 1943, and obtained judgment of the following tenor dated September 26, 1944:

"Declarando rescindido el contrato de arrendamiento otorgado entre las partes, y condena al demandado a pagar a la demandante: (a) la cantidad de P1,767.50 con sus intereses legales desde la interposicion de la demanda de canones vencidos y no pagados correspondientes a los años agricolas de 1942-1943 y 1943-1944; (b) la cantidad de P1,000, en concepto de canon vencido y no pagado correspondiente al año agricola de 1944-1945, con sus intereses legales desde la fecha de su vencimiento hasta su completo pago; y (c) las costas del juicio."

The facts, so far as they are not controverted, are these: In a written contract acknowledged before a notary public on October 8, 1940, the plaintiff leased to the defendant several registered parcels of land which have a combined area of over 33 hectares, situated in the municipality of Mabalacat, Province of Pampanga, and apparently adjoining or close to one another. The contract contained the following stipulations:

"(a) Que el termino de este arrendamiento es de cinco (5) años a contar desde la fecha de esta escritura, prorrogable a otros cinco años siempre y cuando ambas partes asi lo hayan convenido;

"(b) Que el arrendatario pagara un canon anual de mil pesos (P1,000) pagadero por adelantado en el domicilio de la arrendadora, empezando el 1.º de Enero del proximo año de 1941 y el 1.º de Enero de cada año sucesivamente; entendiendose, sin embargo, que el arrendatario pagara la suma de quinientos pesos (P500) el 1.º de Noviembre de este año de 1940 a cuenta del canon correspondiente al primer año;

"(c) Que los canales de riego actualmente existentes en los terrenos objeto de este arrendamiento no podran ser quitados ni removidos ni desviados por el arrendatario sin consentimiento por escrito de la arrendadora;

"(d) Que en este arrendamiento van incluidas las cuotas de azucar correspondientes a los referidos terrenos;

"(e) Que cualquiera infraccion o incumplimiento de todas y cada una de estas condiciones dara lugar a la revocacion de esta escritura y la parte agraviada podra exigir los correspondientes daños y perjuicios."

Upon the execution of this contract, the defendant paid the plaintiff P500, and on or about January 1, 1941, another P500, both as rental for that year. Allegedly because of the outbreak of war in December, 1941, it was not until about February, 1943, that the defendant paid P232.50 as rent for 1942. The plaintiff made a receipt for this amount but the defendant said at the trial that, it had been lost. No other rental was ever paid after February, 1943, as a consequence of which this suit was instituted to rescind the lease and to recover the total yearly rental for 1943 and P767.50 for 1942. On March 4, 1944, before trial, the plaintiff filed a supplemental complaint asking "in

addition to the various reliefs prayed for in the original complaint * * * that the defendant be condemned to pay the sum of P1,000 as rentals in arrears for the year 1944."

The defendant resisted the suit and put up various special defenses. Roughly, he averred that the P232.50 he had paid was in full payment of the 1942 rental. He said that on account of the war, he proposed to the plaintiff, and the latter agreed, that he should pay 100 cavanos of palay in lieu of P1,000 in cash. He added that, as the plaintiff had no empty sacks in which to put the 100 cavanos of palay, he sold the cereal for P232.50, which was the Naric price, and turned the proceeds over to the lessor. As to the rentals for 1943 and subsequent years he invoked article 1575 of the Civil Code, which gives the lessee of agricultural land a right to reduction in case of loss or destruction of more than one-half of the crops by reason of war or other extraordinary fortuitous events.

The article reads in full:

"ART. 1575. A lessee shall not be entitled to a reduction of the rent on account of the sterility of the land leased or on account of the loss of the fruits through ordinary fortuitous events; but shall be entitled to such reduction in case of the loss of more than half of the fruits through extraordinary and unforeseen fortuitous events, unless there is a special agreement to the contrary.

"By extraordinary fortuitous events shall be understood fire, war, pestilence, extraordinary inundations, locusts, earthquakes, or any other equally unusual events which the contracting parties could not have reasonably foreseen."

Before taking up the main legal questions raised by the pleadings certain matters about which there is conflict of evidence should be disposed of.

The P232.50 payment, according to the plaintiff, was an installment to be applied on account of the yearly rental of P1,000 for 1942. She swore that the receipts she issued made this clear. The defendant countered with the statement that the payment was in full satisfaction of the 1942 rental.

The trial court believed the plaintiff and we find no occasion to disagree with His Honor. The alleged loss of the receipt has not been satisfactorily established. The defendant's testimony that he did not take good care of it because it was not important is unconvincing. As a matter of fact, the paper was important; and to a lawyer like the defendant its importance could not have been underestimated, especially if we are to believe his assertion that the receipt cancelled, in effect, the balance of the rental for 1942, amounting to P767.50. The preservation of the receipt should have had an added significance to him if we are to accept his other statement that when he made the payment he asked the plaintiff for one-half reduction of the rentals for 1943 and subsequent years but that the plaintiff refused to make any commitment. There is one other factor worth bearing in mind: the basic contract was in a public document and the defendant, as a lawyer, must have known that to vary its terms he had to have a writing as proof if not as essential requisite to the validity of the supposed change.

The presumption of law, therefore, against a party who suppresses material evidence is applicable in this case.

Independent of what the receipt might reveal, the defendant's version of the alleged reduction, which the plaintiff brands as an outright falsehood, does not ring true. He testified that he casually met the plaintiff at a store in Mabalacat in January or February, 1943. There, he said, he and the plaintiff talked about the rental and she then and there agreed to receive 100 cavanos of palay in full discharge of the 1942 rental. Going into details, he said that when his tenants began to bring palay he told his overseer to get empty jute sacks from the plaintiff; that as the plaintiff told his emissary she did not have empty sacks, he personally went to see her in her house; that the plaintiff reiterated her inability to furnish empty sacks and suggested that if possible he use his own sacks; that he thereupon sold the palay at the prevailing NARIC prices, which were P2 for colored rice and P2.65 for white; that

"at that moment I returned twice and handed to her P232.50 as the sale price of 100 cavanese."

There are lapses in this testimony which lead to doubts of its exact veracity. The defendant, for example, did not say that the plaintiff authorized him to sell the palay, much less at reduced prices. It seems strange that simply because there were no sacks available, the defendant, without so much as insinuation from the plaintiff, should have hastened to dispose of the cereal very cheap. Our skepticism applies to the defendant's statement that the plaintiff accepted 100 cavanese of palay as full annual rental.

The fact that P232.50 tallied to the last centavo with the alleged NARIC quotations is not, without more, evidence that the money was paid by the defendant and accepted by the plaintiff in full satisfaction of the yearly rental for 1942, or that the plaintiff abided by the reduction he claims to have asked for. The defendant might have sold in reality 100 cavanese of palay at the price stated by him and turned the entire proceeds over to the plaintiff in check or in cash, or else he might have sold a smaller quantity, say, 50 cavanese or 25 cavanese at double or quadruple the alleged NARIC price per cavan, thereby realizing the same amount of cash. In any case, we cannot see how from the mere fact that the payment was not in round figure can be wrested the conclusion that it was all the money the defendant got for 100 cavanese of palay, or that it was intended as a complete discharge of his liability for 1942 in the concept of rent.

With these details out of the way, we now proceed to consider the applicability to this case of article 1575 of the Civil Code.

The rental for 1941 having been paid on time and in the specified amounts, is out of the case. If the defendant lost the 1941 sugar cane crops and wants a reduction of the rental for that year, he has not sought an affirmative relief or given any indication of his purpose in his answer. Moreover, Manresa—after pointing out that under article 1617 of the Italian Code, if the lease is for a number of years and during its life the whole or at least one-half of the fruits corresponding to one year have perished, the tenant could ask for a reduction of the rent—states that however strong may be the reasons of equity which inspired the principle of compensation, set-offs among the products of different years is not legally possible under the Spanish Civil Code. (10 Manresa, *Código Civil Español*, pp. 599-600.)

The conclusion at which the lower court and this Court have arrived, that the P232.50 was intended only as an advance on the annual rent for 1942, and that there was no separate stipulation, express or implied, between the parties to change the annual rental to 100 cavanese of palay, also removes the 1942 rental out of the provision of article 1575 of the Civil Code. We believe that the acceptance by the defendant of the receipt embodying an implied promise to pay the balance later, operated as a waiver of any right to a reduction or compensation which he might have under that provision.

However this may be, there is another aspect of the case which in our opinion precludes availability to the defendant of the benefits of article 1575 of the Civil Code as regards not only the rentals for 1943, 1944 and 1945, but also those of 1942. Article 1575 lays down as basis of rental discount a loss of more than one-half of the products of the land on account of war, etc. There is no pretense that the region where the land under lease is located had ever been a combat zone, and no destruction of, or damage to, the 1942-1945 crops arising out of the war has been proved. The purported loss of his share of the rice crops for one of the years during which the contract of lease was in force was due to his tenants' dishonesty or his own negligence. The gravamen of the defendant's contention is that the leased land by its nature was sugar land and that he was unable to plant sugar cane on it in 1942 and the following seasons because the sugar milling centrals were closed.

If it be assumed that the defendant's crops were totally lost in 1942, 1943, and 1944, his case would not be any better. One vital point which escapes the defendant's argument is that, although the contract was for five years and

it had four more years to run when the war broke out, yet he could have rescinded the lease at the beginning of 1942 and the plaintiff would have gladly taken back her property. Planting season had not yet started. But the defendant chose to continue with the lease and hired tenants to plant rice. If he lost in the venture, the loss was not due to any extraordinary event he had not thought of. It was rather due to mismanagement, miscalculation and/or other factors not entirely unexpected by him. It should be noted that under article 1575 the cause of the loss must not only have been an extraordinary event but must also have been one which the parties could not have reasonably foreseen. In the face of the willingness of the plaintiff to have the lease rescinded early in 1942—before planting season commenced and after the country was plunged into war—and "to release the defendant from any obligation to pay rental for that and the following years, he can not say that the war to which he attributes his losses was an unforeseen circumstance within the contemplation of article 1575. War was already going on when he decided to cling to the contract in spite of the plaintiff's wishes to terminate it. He was then full; aware of the hazards incident upon the conflict of arms which was raging, hazards which he ought to have known might turn against the success of his enterprise. Manresa's commentary on article 1575 of the Civil Code is applicable and pertinent to the contract under consideration from the second year of its life, as it would be to the entire contract if the latter had been entered into after the war started. The situation of the parties with reference to the war in both cases would be exactly the same. Now, this is what the learned commentator says:

"Por lo tanto, no podra el arrendatario exigir esa rebaja cuando se trata de casos fortuitos extraordinarios previstos, si bien es logico contraer esta prevision al tiempo de la perfeccion del contrato, y no a otro momento posterior. Por ejemplo, si cuando el arrendamiento se pacto el pais ardia ya en guerra o la region estaba infestada de langosta, aunque no le estuviera la finca arrendada, es claro que se trata de casos fortuitos extraordinarios previstos, que, desde luego, ejercian su influencia en la fijacion del precio, y que las partes tendrian en cuenta al contratar; de donde no resulta justo el que en tal supuesto se rebaje la renta. Pero si, por el contrario, esos sucesos se iniciaron estando ya el arrendamiento en el periodo de su ejecucion, la rebaja de renta es, sin duda, la solucion adecuada."

Coming to the evidence, the testimony of the plaintiff that she was willing and ready to have the contract rescinded early in 1942, when the defendant had defaulted in the payment of the rental for that year, is not open to serious doubt. The defendant's own testimony tends to confirm it. By his admission, he continued to work the land, "notwithstanding previous losses, in the expectation of gaining something in the subsequent years." He himself declared that "la madre de la arrendadora me quiere quitar el terreno." In answer to a question of the trial judge he gave the court to understand that he was unwilling to return the land unless he was paid or reimbursed the debts of his tenant. On cross-examination he said that he would not surrender the possession of the land to the lessor without a court order because he wanted, he explained, to recoup some of his losses. He was so bent on not giving up the land that he tenaciously fought the suit for rescission.

As Manresa also points out, the reduction of rent or exemption from its payment, judged by the context of article 1575, has all the appearances of being founded on equity and not on strict law. The facts of the case as developed by his own testimony do not show the defendant in good light on this score.

If some of the defendant's crops in 1942, 1943 or 1944 perished, the evidence does not give the ratio of the loss in relation to the usual production of the land. Needless to say, the burden is on him to prove that the loss was more than one-half in order that he might be entitled to compensation. The only thing that is certain from his testimony is that at the outbreak of the war, that is after the calendar year 1941, he was unable to plant sugar cane.

But whatever benefits he failed to make because of his inability to plant sugar cane after the first year and after he decided to go ahead with the contract, are not losses within the purview of article 1575 of the Civil Code and cannot serve as legal standard for computing the proportion of the injury. As has been adverted to before, after the first year he was fully conscious that because of lack of milling facilities sugar planting on a large scale was out of

the question. And damage in the form of palay not accounted for by his tenants is not the kind of damage recognized by the Civil Code provision cited by him. Impairment arising from the fact that the leased property was not totally made use of comes under the same juridical category. Not only in law but in equity also the lessor cannot be made to share the lessee's adversity in such circumstances. The fault was the lessee's and his alone; it was due to poor judgment, negligence or inefficiency on his part. His failure was not caused by war in the legal sense of the term. Fighting had ceased, at least such fighting as would have made destruction of crops inevitable. All that can be said in the way of obstacles to his full enjoyment of the land was that thefts were more rampant, tenants perhaps had become more unruly, and the like. But these obstacles entered into the transaction; they were part of the game, so to say, and, what is more, were not by any means insurmountable. As the learned trial judge, a native of Pampanga and familiar with local conditions, insinuated in his interrogatories, other land owners and planters had succeeded in working their farms and gathering their harvests.

Furthermore, if the defendant did not raise sugar, he planted a crop that was as important as, if not more, and commanded better price, than sugar in the years above named, besides being easier and less expensive to raise. In all likelihood these considerations exercised a powerful influence in his decision to keep the land during the remainder of the lease.

The plaintiff introduced no evidence relative to the area planted to rice by the defendant or regarding the normal yield of the land. It is possible that she did not concern herself with this phase of the case because it was not an essential issue. In the absence of any other proof, we are forced to rely largely upon the defendant's testimony. All the same, the defendant has not made such a showing as to entitle him to a reduction of the rent. Granting that the land brought him less than he expected, and granting that the shortage was not due to his own shortcomings, the other end of the bargain must not be overlooked. One who seeks equity must do equity. In demanding justice one must weigh his side against the other, and actualities should always be kept in view. What were then the situations of the parties?

The defendant testified that only four hectares of the plaintiff's land was provided with an irrigation system. Even so, he admitted that one-half of the whole tract was adapted to rice planting; that from 18 to 20 hectares was planted to rice in 1942 and the two following years; that the rest of the land although high could be used also for planting rice; that the normal production of the entire tract was 1,000 cavanos of palay; that the land under cultivation yielded 500 cavanos in 1942 and about the same quantity in 1943, and that out of these crops his share was 190 cavanos a year from which the cost of seeds and so on were to be deducted. His statement as to the reason why he did not farm the other half of the land, like many others, is not explicit.

Having come from an interested and biased source, the defendant's evidence has to be taken with plenty of allowances for understatement both as to the acreage utilized and the quantity of palay gathered. Much of his testimony is so equivocal as to invite distrust. But taking this testimony on its face value, we still fail to see justice in his claim to a reduction of rent. Compared with what he admitted having received as his part of the harvests in 1942, 1943 and 1944, P2,767.50 in August, 1944, was insignificant. That was the amount which was due as rents in arrears in that month, when the trial was held and when he persisted in fighting the case. At that time the price of rice had risen to fabulous heights while the value of the peso had toppled down in inverse proportion, with the result that P3,000 could hardly have bought five or ten cavanos of rice. It is to the credit of the plaintiff that no increase in rent was asked by her to compensate for the tremendous slump which the "Mickey Mouse" notes had taken. As equity is the philosophy underlying article 1575, conditions as they were and not as they might have been are important factors in arriving at a just decision.

Now, of course, things are different. A judgment against the defendant has to be satisfied with legitimate money. This may be fortunate for the plaintiff and unfortunate for the defendant. If it is his misfortune, the blame can only

be laid at the door of his own unjustified stubbornness. A party who would not budge an inch to do simple justice to his opponent when he could have done so without doing himself an injustice, was taking a chance and has to suffer the consequences.

The first assignment of error attacks the validity of the judgment on the ground that the plaintiff's husband was not joined as plaintiff. It is contended, with support of law and authorities, that even though the subject matter of the contract is a separate property of the wife, yet the suit seeks to recover rents which under article 1401 of the Civil Code belong to the conjugal partnership.

We, however, do not believe that the case should be dismissed for plaintiff's failure to join her husband. (Sec. 11, Rule 2, Rules of Court.) Nor should the case be remanded to the court below and a new trial ordered on this account. The complaint may and should be amended here, to cure the defect of party plaintiffs, after final decision is rendered. Section 11, Rule 2, and section 2, Rule 17, explicitly authorize such procedure. As this Court had occasion to say in *Quison vs. Salud* (12 Phil., 109, 116), "a second action would be but a repetition of the first and would involve both parties, plaintiffs and defendant, in much additional expense and would cause much delay, in that way defeating the purpose of the section, which is expressly stated to be 'that the actual merits of the controversy may speedily be determined without regard to technicalities and in the most expeditious and inexpensive manner.' " (See also *Diaz vs. De la Rama*, 73 Phil., 104.) This procedure is all the more reasonable in the present case because it does not appear nor is there the slightest hint that the plaintiff's husband is hostile to his wife's demand or claims any interest in the suit adverse to hers, or that the defendant, by any possibility, has any evidence to present with reference to the husband.

Wherefore, it is ordered that the plaintiff within ten days from notice hereof file an amended complaint making her husband party plaintiff; and after said complaint is filed, let judgment be entered affirming the decision of the lower court with costs of both instances against the appellant.

Moran, C.J., Feria, Bengzon, Briones, and Padilla, JJ., concur.

PARAS, J.:

I concur, subject to the order in Moratorium.

DISIDENTE

PABLO, M.:

Disiento. Una simple confirmacion de la sentencia dara derecho al demandante a pedir la ejecucion de la sentencia en contravencion de la orden de moratoria. (Orden Ejecutiva No. 25, tal como fue enmendada por Orden Ejecutiva No. 32, 41 Off. Gaz., 56; Cruz contra Avila, 76 Phil., 133; De la Fuente contra Borromeo, 76 Phil., 442; y Ordoñez contra Angkiangco, 77 Phil., 387.) Esta medida es de orden publico, de emergencia y no debe ser ignorada por este Tribunal solamente porque el demandado no lo haya utilizado como defensa. Su fin primordial es evitar el completo colapso de la economia nacional. desquiciada ya por la guerra. Si el Congreso hasta la fecha no ha levantado esta orden deben existir aun las razones que urgieron su adopcion. Si el demandado quiere no acogerse a sus disposiciones, puede hacerlo; pero creo que este Tribunal debe ordenar, como sana politica judicial, que la sentencia no se ejecutara hasta que se haya decretado el levantamiento de la orden de moratoria.

DISSENTING

PERFECTO, J.:

On September 26, 1944, Judge P. Angeles David, of the Court of First Instance of Pampanga, rendered judgment declaring rescinded the contract of lease on three parcels of land located at Mabalacat, Pampanga, executed by the parties on October 8, 1940, and ordering defendant to pay plaintiff P2,767.50 as rents for three agricultural years from 1942-1943, plus legal interests, and the costs. Said decision, having been rendered during enemy occupation and by a court acting under the Japanese imperial government, is among the judicial processes which, according to our opinions in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113), are null and void. See also our opinion in *Laurel vs. Misa* (77 Phil., 856).

On the merits of the controversy between the parties, it appearing that the duration of the lease contract was only for five years and, therefore, it expired on October 8, 1945, it is proper to declare so and, therefore, plaintiff is entitled to recover the possession of the properties in question. With regard to the monetary obligations of defendant as found by the lower court and by the majority of this Court, for rents due for the leased lands, we are of opinion that no action should be taken by this Court or any other court until the debt moratorium provided in Executive Order No. 25, as amended by Executive Order No. 32, is lifted. In our decision in *Palacios vs. Daza*, dated October 16, 1945 (75 Phil., 279), we declared suspended the execution of a final judgment rendered on August 28, 1940, ordering the Province of Batangas to pay a monetary obligation.

For all the foregoing, we are of opinion that, as we have explained in *Co Kim Cham vs. Valdez Tan Keh and Dizon*, *supra*, the appealed decision should be declared null and void, or failing it, the lease contract between the parties should be declared terminated on October 8, 1945, plaintiff being entitled to recover the possession of the leased lands, and all action upon the rents the defendant should pay to plaintiff should be held in abeyance until the debt moratorium provided in Executive Order No. 25, as amended by Executive Order No. 32, is lifted.

With regard to the procedural question raised by defendant, asking that the case be dismissed, because plaintiff failed to join her husband as co-plaintiff, it being merely a technical defect, it can be cured at any stage of the proceedings. It is not even necessary to order plaintiff to file an amended complaint including her husband as party plaintiff, as the purpose of the rules can expeditiously be attained by a pronouncement to the fact that the husband should be considered, for all legal purposes, as party plaintiff.

RESOLUTION

September 18, 1947

"In G. R. No. L-208, *Ines Consolacion Cuyugan vs. Jose P. Dizon*, the Court resolved to deny the motion for reconsideration of the defendant and appellant in so far as the said motion goes to the merits of the case; and that as to the application of Executive Order No. 25 as amended by Executive Order No. 32, it is and was the opinion of this Court that the time to invoke the benefits of that Executive Order, in this particular case, is when writ of execution is issued, considering that if the Moratorium Order was not pleaded it was because it was promulgated after this cause was decided by the lower court. Mr. Justice Perfecto voted to grant."

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