

EUGENIO DE LA CRUZ, PETITIONER, VS. THE HONORABLE JUAN BOCAR AND HONORABLE EMILIO RILLORAZA, ACTING JUDGE AND VACATIONING JUDGE, RESPECTIVELY, OF THE COURT OF FIRST INSTANCE OF ...

G.R. No. L-8814. June 30, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for certiorari filed by Eugenio de la Cruz against respondents Judges Juan Bocar and Emilio Rilloraza of the Court of First Instance of Rizal, Pasay City Branch, and Rufina and Company. The facts in this case as disclosed by the pleadings and their annexes may be briefly stated as follows.

On or about May 21, 1954, Rufina and Company filed a complaint for unlawful detainer in the Justice of the Peace Court later referred to as the Peace Court, of Malabon, Rizal,—Civil Case No. 1176, against Eugenio de la Cruz regarding a parcel of land in the municipality of Malabon with an area of 1,337 square meters covered by Transfer Certificate of Title No. 33343 of the office of the Register of Deeds of Rizal province, said to have been bought by her from Balbino Ignacio, et al. Defendant-Petitioner Cruz filed a motion to dismiss the complaint on the ground that the Peace Court had no jurisdiction over the case because it involved question of title or ownership of the land in litigation and in support of his motion, he filed his application for purchase with the Bureau of Lands (Miscellaneous Sales Application No. V-25569). The motion to dismiss was denied by the Peace Court on July 1, 1954, and so was the motion for reconsideration on July 19, 1954, after which the Peace Court set the case for hearing.

To stop the proceedings in the Peace Court Cruz filed Civil Case No. 2819 in the Court of First Instance of Rizal for prohibition against the Justice of the Peace. Acting upon a motion to dismiss the petition respondent Judge Rilloraza in an order dated August 21, 1954, dismissed the petition for prohibition, holding that mere defense of ownership does not divest the Justice of the Peace Court of jurisdiction over an unlawful detainer case. Cruz did not appeal from this order of dismissal. Thereafter, the Peace Court proceeded with the hearing of the detainer case, after which it rendered judgment on October 14, 1954, ordering Cruz to vacate the premises and to pay costs. Cruz appealed to the Court of First Instance, Civil Case No. 3110, and he filed a motion to dismiss the complaint. Said motion was denied by Judge Rilloraza in an order dated February 13, 1955.

In the meantime, plaintiff Rufina and Company in the appealed case, filed a motion for the issuance of a writ of preliminary mandatory injunction. Over the objection of Cruz, Judge Rilloraza in an order dated January 7, 1955, granted the motion upon the filing of a bond in the sum of P500, and a writ of preliminary mandatory injunction was actually issued on February 14, 1955.

To annul the orders denying his motion to dismiss the complaint in Civil Case No. 3110 of the Court of First Instance of Rizal, and the order granting the petition for a writ of preliminary mandatory injunction in the same civil case, the present petition for certiorari was filed.

As regards the order denying defendant-petitioner's motion to dismiss the complaint in the appealed case (Civil Case No. 3110), we agree with the respondent Judge that a mere defense of ownership of the land involved in a detainer case does not divest a Justice of the Peace Court of jurisdiction. Consequently, the order denying the motion to dismiss was properly issued. On the question of ownership of the land said to be detained by defendant, as already stated, the same is registered land covered by Torrens title in the name of plaintiff Rufina and Company. On the other hand, the claim of ownership by defendant Cruz is based merely on a Miscellaneous Sales Application filed by him with the Bureau of Lands which upon the opposition of Rufina and Company, was rejected by the Bureau. It is true that the effect of said rejection of his said sales application was later suspended by the Director of Lands, subject to further investigation, but thereafter, the Director of Lands in his order of November 15, 1954, found that the sales application of Cruz encroached upon the land of Rufina and Company already covered by the torrens title; that excluding that portion overlapping the registered land, there remains only a small portion but this portion covers a canal or creek which Cruz seems to have filled up; and under the circumstances the Bureau withheld action on the Cruz' sales application to see whether the remaining portion was open and available for disposition because it may affect the rights of the public. From all this, it would appear that Cruz' claim of ownership of the land subject of the detainer case on the strength of which he sought to divest the Peace Court of jurisdiction is unfounded. Moreover, the order of the Court of First Instance in the prohibition case No. 2819 dismissing his petition and which case directly involved the jurisdiction of the Peace Court to hear and decide the pending detainer case, became final because Cruz failed to appeal from it, thereby making it conclusive as against him; and said Peace Court had jurisdiction to hear and determine said detainer 'case, as in fact it decided it against him.

With respect to the issuance of the writ of preliminary mandatory injunction against Cruz in Civil Case No. 3110, of the Court of First Instance, we gather from the pleadings filed in the said Court marked as Annexes by both parties that petitioner Cruz claims that the petition for the issuance of the writ was filed beyond the ten day period fixed by Art. 1674 of the New Civil Code for the reason that the appeal was perfected on November 2, 1954, and the motion for the issuance of the writ was filed on November 23, 1954. Plaintiff Rufina and Company, however, explained that the said ten days should be counted not from the actual date of the perfection of the appeal but from the time that it was notified of said perfected appeal which was on November 19, 1954.

We agree with plaintiff-respondent. An appellee in a case appealed from the Justice of the Peace Court to the Court of First Instance is not called upon to be always on guard in the Justice of the Peace Court to ascertain the exact date and hour the appeal is perfected. All that an appellee is expected to do is to wait for the official notice to him of said perfected appeal from the Court of First Instance where the appeal is taken. Otherwise, said appellee may be prematurely filing a petition for the issuance of a writ of preliminary mandatory injunction in the Court of First Instance before the appeal is actually received by the said court; and said appellee would not know how to entitle or number his petition, and the Clerk of Court may not admit said petition because there is as yet no case or record of a case to which it may be attached and incorporated. We, therefore, rule that the period of ten days mentioned in Article 1674 within which to file a petition for a writ of preliminary mandatory injunction should be counted from the date when the petitioning party is notified of the perfection of the appeal.

Defendant-petitioner Cruz also contends that Article 1674 of the Civil Code is not available to Rufina and Company for the reason that it had' no previous possession of the property in litigation.

Prior physical possession in the plaintiff in an unlawful detainer case is not an indispensable requisite where said plaintiff is a vendee.[1] Cruz also claims that there being no relation of lessor and lessee between plaintiff Rufina and Company and himself, the provision of Article 1674 of the Civil Code is not applicable. From what we gather from the records, before Rufina and Company bought the land, the vendor had permitted Cruz to occupy a part of

it and to build his house thereon, on what conditions and whether or not he was to pay rent, is not known. These conditions and the relation between the owner of the land and Cruz as a temporary occupant continued after the sale of the land. Thereafter, the vendee Rufina and Company made a demand upon De la Cruz to vacate the portion occupied by him but he refused. It is not necessary that there be a formal agreement or contract »of lease between the vendor or vendee and Cruz. For the purposes of Article 1674 of the Civil Code, it is enough that the plaintiff is the owner of the land and the defendant is in temporary occupancy thereof whether under a lease contract or on mere tolerance or under a temporary permit. Where after the termination of the lease contract or the revocation of the permit the lessee or occupant unlawfully prolongs his occupation of the premises, there is unlawful detainer. It is therefore clear that Article 1674 of the Civil Code is applicable to the present case.

In view of the foregoing, finding the orders of the Court of First Instance issued by the respondents Judges to be in accordance with law, the petition for certiorari is hereby denied, with costs.

Paras, C. J., Bengzon, Padilla, Reyes A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] Aguilair vs. Cabrera, 74 Phil., 658.

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