

## ENRIQUE ZOBEL, PETITIONER, VS. ELIGIO A. ABREU, AS JUSTICE OF THE PEACE OF CALATAGAN, BATANGAS AND GUILLERMO MERCADO, RESPONDENTS.

*G. R. No. L-7663. January 31, 1956*

Ponente: LABRADOR, J.

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### LABRADOR, J.:

Petitioner prays for the issuance of a writ of mandamus to compel the Justice of the Peace of Calatagan, Batangas to reinstate Civil Case No. 40 of that court, entitled Enrique Zobel, plaintiff,, vs. Guillermo Mercado, defendant, which said respondent court had dismissed on the ground that it had no jurisdiction to try the case.

In said Civil Case No. 40, Zobel sought to eject Mercado from a fishpond which the latter had leased from the former on April 15, 1950 at a yearly rental of P239.03. In the complaint filed by petitioner, the following allegations . were made:

"5. That prior to and within one year from date hereof, plaintiff has been unlawfully deprived of the possession of the property in question, and despite the former's repeated demands on the latter to vacate the same, defendant has failed to do so, the last demand having been made on October 9, 1953;

"6; That the defendant has repeatedly failed to pay his annual rent and continued to occupy the property in question notwithstanding the repeated. demands of the plaintiff to return the leased premises ' and for the payment of the annual rents from April 1, 1951 up to the present time, at the rate of P239.03 per year."

It is also alleged in paragraph 2 of said complaint that the lease was for a term of one year from April 1, 1950 to March 31, 1951, \* \* \* and renewable thereafter on a year to year basis." Respondent Mercado promptly filed a motion to dismiss on the ground that the justice of the peace court lacks jurisdiction over the subject-matter, for the reason that when the action was filed more than one year had elapsed from the unlawful deprivation or withholding of the possession; this is so, according to the motion, because from April 1, 1950 to February 5, 1954, the date of the filing of the complaint, more than one year had expired. In answer to said motion, petitioner stated that from the allegations of the complaint there was a tacit renewal of the lease from year to year and an implied acquiescence on the part of the lesser to let the defendant enjoy the possession of the fishpond. The Justice of the Peace court held that the cause of action accrued from April 1, 1952, because the plaintiff would naturally have made a formal demand to return the property on that date, for failure of the defendant to pay the rents from April 1, 1951 to March 31, 1952. The respondent judge, therefore, decided that his court lacks jurisdiction to try the case and dismissed the action.

In the consideration of the motion to dismiss, which has supplanted the former demurrer under the Code of Civil Procedure, the facts alleged in the complaint must be taken into account, without modification and without unreasonable inferences therefrom, and it is improper to inject in the allegations thereof facts' not alleged or proved, and use these as basis for said motion. The claim that the rights of respondent Mercado to retain possession of the property expired on April 1, 1952 is not justified by the allegations of the complaint as there is

no statement to that effect, nor evidence submitted on which to base such conclusion. The claim is, furthermore, contrary to the express allegation that the petitioner was deprived of the possession of the land in question "prior to and within one year from the date hereof" (of the complaint). This is so - because mere failure to pay rents, or a breach of contract to pay rents, does not render the possession of the lessee per se unlawful, nor may the action for his ejectment from the land accrue upon such failure, or breach. In accordance with Section 2, Rules 72 of the Rules of Court, the right to bring the action of ejectment or unlawful detainer must be counted from the time the defendant has failed to pay the rent after demand therefor. It is not the failure to pay rents as agreed upon in a contract, but the failure to pay the rents after a demand therefor is made that entitles the lessor to bring an action of unlawful detainer.

Furthermore, even if the lessee had failed to pay the rent after a demand had been made upon him therefor, the lessor still had the privilege to waive his right to bring the action, or to allow the lessor to continue in possession, thereby legalizing such possession. This is the substance of our ruling in the case of *Lucido & Lucido vs. Vita*, 25 Phil. 414, wherein we held:

" \* \* \*. Upon the other hand, however the landlord might conclude to give the tenant credit for the payment of the rents and allow him to continue indefinitely in the possession of the property. In other -words, the landlord might choose to give the tenant credit from month to month or from year to year for the payment of the rent, relying upon his, honesty or his financial ability to pay the same. During such period the tenant would not be in illegal possession of the property and the landlord could not maintain an action of desahucio until after he had taken steps to convert the legal possession into an illegal possession. A mere failure to pay the rent in accordance with the contract would justify the landlord, after the legal notice, in bringing an action of desahucio. The landlord might, however, elect to recognize the contract as still in force and sue for the sums due under it. It would seem to be clear that the landlord might sue for the rents due and unpaid, without electing to terminate the contract of tenancy."

A third reason against the order of dismissal is the directive contained in the Rules (Rule 8, Sec 3,. Rules of Court) to the effect that the judge "may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable." Under the circumstances of the case, the respondent court should not have dismissed the complaint but should have waited until the trial, or asked the parties to submit evidence on the motion to dismiss.

The order of the court dismissing the action for lack of jurisdiction on the basis of the allegations of the complaint alone and the inferences it had made from said allegations is not justified by law. While the action of mandamus may not be the proper remedy, in the interest of justice, we consider the petition as one of certiorari and declare that the order of dismissal was issued with grave abuse of discretion by the respondent judge. Let a writ issue from this court declaring the order of the judge dismissing Civil Case No. 40 null and void and ordering that the case dismissed be reinstated with instructions that the respondent judge proceed to hear it in accordance with the rules. Costs shall be taxed against respondent Guillermo Mercado.

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

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