

MARIA BONGALA AND ELIAS GORAYEB, DEFENDANTS AND PETITIONERS, VS. JOSE BARBAZA, JR. AND MERCEDES FORTICH, PLAINTIFFS AND RESPONDENTS; BIENVENIDO A. TAN, JUDGE, RESPONDENT.

G.R. No. L-1664. April 21, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Petitioners were sued on July 17, 1947, in the Court of First Instance presided by respondent judge, where plaintiffs alleged that petitioners were withholding the possession of the premises known as No. 240 Apelo Cruz, Rizal City.

On August 9, petitioners filed a motion to dismiss the complaint on the ground that (a) a forcible entry and detainer case does not fall under the jurisdiction of the Court of First Instance in accordance with sections 1 and 2 of Rule 72; (b) even if it were to be cognizable by said court, the complaint is not verified under oath and no notice was made to the petitioners prior to the filing of the complaint; and (c) the complaint does not allege facts to constitute a cause of action. The motion was denied on August 23. On September 1, petitioners filed a motion for reconsideration which was denied on September 6.

In the complaint sought by petitioners to be dismissed, plaintiffs Barbaza and Fortich allege that on April 19, 1947, petitioners executed a deed of sale selling to plaintiffs the property in question in consideration of the price of P15,000; that defendants promised to vacate the premises within two months, but failed to do so and continued to occupy the property; that when plaintiffs bought the property it was with the purpose of occupying it with their family and defendants knew that plaintiffs had to move out from their residence in June, because the owner of the house they were occupying wanted to occupy it immediately; that defendants had leased the upper story to third persons at P150 a month, and prayed that defendants be sentenced to pay to plaintiffs P20 a day as damages from June 19, 1947, to the date when defendants shall have returned and transferred the possession of the property to plaintiffs; to pay to plaintiffs the amount of P300 which defendants have received from their lessees from April 19 to June 19, 1947, and the payment of other amounts said lessees may pay thereafter; to pay P200 as attorney's fees, plus costs; and to give to plaintiffs other remedies according to justice and equity.

From the above, it is clear that the complaint filed is one for ejectment under the provisions of section 1, Rule 72, which reads as follows:

"Who may institute proceedings, and when.—Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a landlord, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such landlord, vendor, vendee, or other person, may, at any time within one year after such unlawful deprivation or withholding of possession, bring an action in the

proper inferior court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. The complaint must be verified."

The complaint was filed with the evident purpose of recovering the possession of an immovable from the vendors who were withholding it from the vendees, a remedy specifically provided in the above-quoted reglementary provision.

Plaintiffs do not ask in so many words that defendants be ordered to vacate the premises, but it is implied in the general prayer for any other remedy in accordance with justice and equity, considering plaintiffs' allegations as to the exclusive purpose in buying the property and the urgency of having to move out from their residence in June.

The complaint has been filed within one month after the alleged breach by defendants of their obligation to vacate the premises and turn over its possession to plaintiffs.

Act No. 136 of the Philippine Commission, as amended, confers exclusive original jurisdiction upon municipal and justice of the peace courts on ejectment cases within one year after the unlawful deprivation or withholding of possession committed by defendant.

The Court of First Instance presided by respondent judge has no jurisdiction to take cognizance of the complaint in question, which must be originally filed with the proper municipal or justice of the peace court.

For all the foregoing, the order of respondent judge dated August 23, 1947, denying the dismissal of the complaint in civil case No. 257, Jose Barbaza, Jr., et al. vs. Maria Bongala et al., is set aside, and, said complaint is dismissed without prejudice to plaintiffs to file said complaint with the municipal court of Rizal City. No costs.

Feria, Pablo, and Bengzon, JJ., concur.

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