

THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. VENANCIO BACAY AND FELICIANO BACAY, DEFENDANTS AND APPELLANTS.

G.R. Nos. L-19358-59. March 31, 1964

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Manila, Hon. E. Soriano, presiding, ordering Venancio Bacay and Feliciano Bacay to vacate the parcels of land leased by them from the City of Manila, as well as to pay the monthly rentals thereon until they have vacated the properties.

The first case, (CFI Manila, No. 34638) originated with a complaint filed against Venancio Bacay with the municipal court on January 10, 1957 containing the following material allegations: the agreed leasing of the property at the rate of P4.90 monthly; failure of defendant to pay rentals from May 1946 to March 1956; failure of the defendant to vacate the land despite repeated demands made on him to do so; and a request for a judgment for P49.00 representing back rentals.

The second case (CFI Manila, No. 34639) originated with a complaint filed against Feliciano Bacay with the municipal court containing the following allegations: that plaintiff and defendant entered into a lease contract for the defendant to occupy a parcel of land with a monthly rental of P6.80; that the defendant has been delinquent in the payment of rentals from April 1956 to January 1959; and a prayer for judgment for defendant to vacate the property and to pay the rentals due.

Judgment having been rendered in both cases requiring defendants to vacate the premises subject of the actions, defendants prosecuted this appeal. It is urged by the appellants that the complaints in both cases do not contain allegations to the effect that the premises are needed by the City of Manila for its own use, and therefore evidence to prove this point was erroneously admitted by the court over the objections of the appellants. It is further argued that at the time of the trial appellee admitted that defendants are up-to-date in the payment of rentals. Therefore, it is argued by appellants, that plaintiff has no cause of action.

An examination of the allegations of the complaint in the first case, No. 34638, discloses that the only ground of plaintiff for demanding the ejectment of defendant is the supposed failure of the defendant to pay rentals which fact was found in the course of the trial to be untrue because plaintiff admitted that defendant is up-to-date in his payment of rentals. As the failure to pay the rentals is the only ground upon which the action is based, according to the complaint, the defendant's appeal appears to merit favorable consideration because the only ground for plaintiff's request that defendant vacate the premises is the latter's failure to pay the rentals and this fact was not proved at the trial. It so happened, however, that at the time of the trial plaintiff presented without objection on the part of the defendant, a letter of demand Exhibit "A" which reads as follows:

"In connection with your use and occupancy of the city property (31.00 sq. m.) located at your above address, please be informed that the said city lot is urgently needed by the city for the use and occupancy by District No. 1, Compound of the Streets and Bridges Division, Office of the City Engineer.

"In view thereof and pursuant to the directive of His Honor, the Mayor, you are requested to pay to this office within five (5) days from the receipt hereof the amount of P24.50 representing back rentals and/or damages thereon covering the period from April 1956 to August 1956, inclusive, at the monthly rate of P4.90 and forthwith vacate the city lot involved; otherwise, this office will be constrained to refer the matter to the City Fiscal for the institution of proper legal action against you for ejectment and collection of back rentals and/or damages without further notice."

In the other case, No. 34639, a similar letter addressed to the defendant, written by the City Treasurer, was admitted without objection on the part of defendant.

Both of the letters contain the statement that the lot subject of the letter is urgently needed by the city for use and occupancy, and besides request is made for the defendant to pay the rentals and "vacate the city lot involved".

The result of the admission of the said two exhibits without objection on the part of the defendant is that said exhibits supplied the defective allegations of the complaint in both cases and by the admissions of said copies of the letters, the allegations of the complaints were ipso facto amended by the inclusion of the allegation in each case that the city needed the lot and that defendant should forthwith vacate the same.

The objection to the decision appealed from can not therefore be sustained.

It is also argued in appellants' brief that since the documents, Exhibits "A" in both cases, had not been attached in the complaint their admission and consideration should have been denied. This argument is clearly without merit.

WHEREFORE, the judgment appealed from should be, as it is hereby, affirmed with costs against the defendants-appellants.

SO ORDERED.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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