

JOSE C. ZULUETA, PETITIONER, VS. HON. HERMINIO MARIANO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH X OF THE COURT OF FIRST INSTANCE OF RIZAL; AND LAMBERTO AVELLANA, RESPONDENTS.

G.R. No. L-29360. January 30, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this action for Mandamus and Prohibition, petitioner seeks to compel respondent Judge to assume appellate, not original, jurisdiction over an Ejectment case appealed from the Municipal Court of Pasig (CC No. 1190 entitled Jose C. Zulueta vs. Lamberto Avellana), and to issue a Writ of Execution in said case.

The antecedental facts follow:

Petitioner Jose C. Zulueta is the registered owner of a residential house and lot situated within the Antonio Subdivision, Pasig, Rizal.

On November 6, 1964, petitioner Zulueta and private respondent Lamberto Avellana, a movie director, entered into a "Contract to Sell" the aforementioned property for P75,000.00 payable in twenty years with respondent buyer assuming to pay a down payment of P5,000.00 and a monthly installment of P630.00 payable in advance before the 5th day of the corresponding month, starting with December, 1964.

It was further stipulated:

"12) That upon failure of the BUYER to fulfill any of the conditions herein stipulated, BUYER automatically and irrevocably authorizes OWNER to recover extra-judicially, physical possession of the land, building and other improvements which are the subject of this contract, and to take possession also extra-judicially whatever personal properties may be found within the aforesaid premises from the date of said failure to answer for whatever unfulfilled monetary obligations BUYER may have with OWNER; and this contract shall be considered as without force and effect also from said date; all payments made by the BUYER to OWNER shall be deemed as rental payments without prejudice to OWNER's right to collect from BUYER whatever other monthly installments and other money obligations which may have been paid until BUYER vacates the aforesaid premises; upon his failure to comply with any of the herein conditions BUYER forfeits all money claims against OWNER and shall pay a monthly rental equivalent to his monthly installment under Condition 1 of this Contract from the date of the said failure to the date of recovery of physical possession by OWNER of the land, building and other improvements which are the subject of this Contract; BUYER shall not remove his personal properties without the previous written consent of OWNER, who, should he take possession of such properties following the aforesaid failure of BUYER, shall return the same to BUYER only after the latter shall have fulfilled all money claims against him by OWNER; in all cases herein, demand is waived;"

Respondent Avellana occupied the property from December, 1964, but title remained with petitioner Zulueta.

Upon the allegation that respondent Avellana had failed to comply with the monthly amortizations stipulated in

the contract, despite demands to pay and to vacate the premises, and that thereby the contract was converted into one of lease, petitioner, on June 22, 1966, commenced an Ejectment suit against respondent before the Municipal Court of Pasig (CC No. 1190), praying that judgment be rendered ordering respondent 1) to vacate the premises; 2) to pay petitioner the sum of P11,751.30 representing respondent's balance owing as of May, 1966; 3) to pay petitioner the sum of P630.00 every month after May, 1966, and costs.

Respondent controverted by contending that the Municipal Court had no jurisdiction over the nature of the action as it involved the interpretation and/or rescission of the contract; that prior to the execution of the contract to sell, petitioner was already indebted to him in the sum of P31,269.00 representing the cost of two movies respondent made for petitioner and used by the latter in his political campaign in 1964 when petitioner ran for Congressman, as well as the cost of one 16-millimeter projector petitioner borrowed from respondent and which had never been returned, which amounts, according to their understanding, would be applied as down payment for the property and to whatever obligations respondent had with petitioner. The latter strongly denied such an understanding. Respondent's total counterclaim against petitioner was in the amount of P42,629.99 representing petitioner's pleaded indebtedness to private respondent, claim for moral damages, and attorney's fees.

The counterclaim was dismissed by the Municipal Court for being in an amount beyond its jurisdiction. However, as a special defense, private respondent sought to offset the sum of P31,269.00 against his obligations to petitioner.

Deciding the case on May 10, 1967, the Municipal Court found that respondent Avellana had failed to comply with his financial obligations under the contract and ordered him to vacate the premises and deliver possession thereof to petitioner; to pay petitioner the sum of P21,093.88 representing arrearages as of April, 1967, and P630.00 as monthly rental from and after May, 1967 until delivery of possession of the premises to petitioner. That conclusion was premised on the finding that breach of any of the conditions by private respondent converted the agreement into a lease contract, and upon the following considerations:

"The question involved herein is that of possession, that is, who of the contending parties has the better right to possession of the property in question. The issue in this case being that of possession, the claim of defendant against plaintiff or P31,269.00 indebtedness, has no place as a defense here. It should be the subject-matter of a separate action against plaintiff Jose C. Zulueta. As it is, said indebtedness is only a claim still debatable and controversial and not a final judgment. It is our considered opinion that to admit and to allow such a defense would be tantamount to prejudging the claim on its merits prematurely in favor of defendant. This the court can not do without violating some rules of law. This is not the proper court and this is not the proper case in which to ventilate the claim."

Respondent Avellana appealed to the Court of First Instance of Rizal presided by respondent Judge. Thereat, petitioner moved for execution alleging private respondent's failure to deposit in advance the monthly rentals, which the latter denied. Respondent Judge held resolution thereof in abeyance.

On February 19, 1968, respondent Avellana filed a Motion to Dismiss Appeal alleging that, inasmuch as the defense set up in his Answer was that he had not breached his contract with petitioner, the case necessarily involved the interpretation and/or rescission of the contract and, therefore, beyond the jurisdiction of the Municipal Court. Petitioner opposed claiming that the Complaint had set out a clear case of unlawful detainer considering that judicial action for the rescission of the contract was unnecessary due to the automatic rescission clause therein and the fact that petitioner had cancelled said contract so that respondent's right to remain in the premises had ceased.

On March 21, 1968, respondent Judge dismissed the case on the ground of lack of jurisdiction of the Municipal Court, explaining:

"The decision of the lower court declared said Contract to Sell to have been converted into a contract of lease. It is the contention of the defendant that the lower court had no jurisdiction to entertain the case as the same involves the interpretation of contract as to whether or not the same has been converted to lease contract. Although the contract to sell object of this case states that the same may be converted into a lease contract upon the failure of the defendant to pay the amortization of the property in question, there is no showing that before filing this case in the lower court, the plaintiff has exercised or has pursued his right pursuant to the contract which should be the basis of the action in the lower court."

Petitioner's Motion for Reconsideration was denied by respondent Judge as follows:

"The plaintiff having filed a motion for reconsideration of this Court's Order dismissing the appeal, the Court, while standing pat on its Order dismissing this case for lack of jurisdiction of the lower court over the subject matter, hereby takes cognizance of the case and will try the case as if it has been filed originally in this Court.

WHEREFORE, let this case be set for pre-trial on July 12, 1968 at 8:30 a.m. with notice to all parties."

Petitioner then availed of the instant recourse.

Was the action before the Municipal Court of Pasig essentially for detainer and, therefore, within its exclusive original jurisdiction, or one for rescission or annulment of a contract, which should be litigated before a Court of First Instance?

Upon a review of the attendant circumstances, we uphold the ruling of respondent Judge that the Municipal Court of Pasig was bereft of jurisdiction to take cognizance of the case filed before it. In his Complaint, petitioner had alleged violation by respondent Avellana of the stipulations of their agreement to sell and thus unilaterally considered the contract rescinded. Respondent Avellana denied any breach on his part and argued that the principal issue was one of interpretation and/or rescission of the contract as well as of set-off. Under those circumstances, proof of violation is a condition precedent to resolution or rescission. It is only when the violation has been established that the contract can be declared resolved or rescinded. Upon such rescission, in turn, hinges a pronouncement that possession of the realty has become unlawful. Thus, the basic issue is not possession but one of rescission or annulment of a contract, which is beyond the jurisdiction of the Municipal Court to hear and determine.

"A violation by a party of any of the stipulations of a contract on agreement to sell real property would entitle the other party to resolve or rescind it. An allegation of such violation in a detainer suit may be proved by competent evidence. And if proved a justice of the peace court might make a finding to that effect, but it certainly cannot declare and hold that the contract is resolved or rescinded. It is beyond its power so to do. And as the illegality of the possession of realty by a party to a contract to sell is premised upon the resolution of the contract, it follows that an allegation and proof of such violation, a condition precedent to such resolution or rescission, to render unlawful the possession of the land or building erected thereon by the party who has violated the contract, cannot be taken cognizance of by a justice of the peace court. x x x"[1]

True, the contract between the parties provided for extra-judicial rescission. This has legal effect, however, where the other party does not oppose it.[2] Where it is objected to, a judicial determination of the issue is still necessary.

"A stipulation entitling one party to take possession of the land and building if the other party violates the contract does not ex proprio vigore confer upon the farmer the right to take possession thereof if objected to without judicial intervention and determination."[3]

But while respondent Judge correctly ruled that the Municipal Court had no jurisdiction over the case and correctly dismissed the appeal, he erred in assuming original jurisdiction, in the face of the objection interposed

by petitioner. Section 11, Rule 40, leaves no room for doubt on this point:

"Section 11. Lack of jurisdiction. - A case tried by an inferior court without jurisdiction over the subject matter shall be dismissed on appeal by the Court of First Instance. But instead of dismissing the case, the Court of First Instance may try the case on the merits, if the parties therein file their pleadings and go to trial without any objection to such jurisdiction."

There was no other recourse left for respondent Judge, therefore, except to dismiss the appeal.

"If an inferior court tries a case without jurisdiction over the subject-matter on appeal, the only authority of the CFI is to declare the inferior court to have acted without jurisdiction and dismiss the case, unless the parties agree to the exercise by the CFI of its original jurisdiction to try the case on the merits." [4]

The foregoing premises considered, petitioner's prayer for a Writ of Execution of the judgment of the Municipal Court of Pasig must perforce be denied.

WHEREFORE, the Writ of Mandamus is denied, but the Writ of Prohibition is granted and respondent Court hereby permanently enjoined from taking cognizance of Civil Case No. 10595 in the exercise of its original jurisdiction. No costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Plana, JJ., concur. Teehankee, (Chairman), J., in the result.

[1] Nera vs. Vacante, 3 SCRA 505, 511 (1961).

[2] Tolentino, Civil Code of the Phil., Vol. IV, 1962 ed, p. 168, citing Magdalena Estate vs. Myrick, 71 Phil. 344 (1941).

[3] Nera vs. Vacante, supra.

[4] Ganancial vs. Atillo, 14 SCRA 460 (1965).

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