

DEVELOPMENT BANK OF THE PHILIPPINES AND UNIVERSITY OF SAN CARLOS, PETITIONERS, VS. THE HONORABLE MATEO CANONoy JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, AND PEDRO CLAVANO, R...

G.R. No. L-29422. September 30, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

The failure of respondent Judge, the Honorable Mateo Canonoy, to defer to the controlling doctrine that the one-year period within which to file an ejectment case is to be counted from the last demand, supplies the basis for this special civil action for certiorari. On its face, then, its merit is rather apparent. We find for petitioners Development Bank of the Philippines and the University of San Carlos.

Right at the outset, after the allegation as to parties, the petition filed on August 22, 1968 makes mention of a decision of respondent Judge of April 24, 1968[1] ordering defendant in such case, now respondent Pedro Clavano, to remove his house and vacate the premises, the plaintiffs being now petitioners Development Bank of the Philippines and the University of San Carlos.[2] In such decision, it was noted that the five lots in question were owned by the Development Bank of the Philippines, thereafter made the subject of a conditional sale to the University of San Carlos, which required defendant Clavano to vacate the premises, a demand not heeded by him. Such a refusal, as set forth in the decision, was predicated on the alleged illegality of such sale as the University of San Carlos is run by foreigners, defendant, moreover, having since 1945 occupied that place on which he did thereafter build a residential and commercial house of strong materials, with its original owner, the Philippine Railway, having promised through its manager to sell him such land. Respondent Judge, after a thorough study of the facts and the law, came to the conclusion that the plaintiff, now petitioner University of San Carlos, had the right to possession, but allowed the defendant one more year, to expire until April 30, 1969, for the removal of his house and the improvements on the premises, with plaintiff being authorized to do so in the event of his failure to comply with this portion of the decision, at the same time requiring him to pay monthly rentals of P24.00 from April 30, 1960 with legal interest until the delivery of the premises.[3]

Assertion was then made in the petition as to respondent Clavano filing a motion for reconsideration on May 24, 1968, where-in the question of jurisdiction was raised on the plea that more than one year had elapsed from the time of the demand.[4] The plea for reconsideration was successful, as, on June 25, 1968, respondent Judge, in a resolution now challenged in this petition, yielded assent.[5] Thus: "The cause of action accrued in July, 1960, that is, after 30 days from June 10, 1960, when defendant was notified by the plaintiff University to vacate the premises and [remove] his building. * * * (Under the terms of the lease contract, the lessee is entitled to 30-day notice of termination.) So, when the original complaint was filed on November 19, 1962 more than one year had already elapsed; consequently, the lower [court] did not have jurisdiction over the present case of unlawful detainer. Consequently also, on appeal this Court as an appellate Court could not [assume] power in excess of the jurisdiction of the lower court." [6] In the dispositive portion of such resolution, respondent Judge granted the

motion for reconsideration and dismissed the case without prejudice, reserving to plaintiffs, however, the right to file the proper action in a competent court. There was an urgent motion for reconsideration filed by plaintiffs, now petitioners, on July 25, 1968, but it was denied on August 6, 1968. Hence, this petition.

The decisive facts are, therein set forth thus: "a) That on November 19, 1962, Civil Case No. R-8996 was filed in the Municipal Court of Cebu against 62 defendants, and respondent Pedro Clavano was one of the defendants who moved to dismiss the complaint on the ground of lack of jurisdiction and misjoinder of parties; b) That on March 25, 1963, the Municipal Court of Cebu, denied the motion to dismiss, and instead ordered that: 'However, the Court orders the plaintiff to split the complaint, that is, one complaint against one defendant, in order that the issues between the plaintiffs and one particular defendant, who has a separate and different defense from the others can be fairly tried. The present complaint shall be maintained but against the first named defendant only. In the meantime, the hearing of the case is held pending until compliance by the plaintiffs with this Court's Order.'" * * *; c) That on June 22, 1964, after various motions and pursuant to the Order of May 8, 1964, issued by the Municipal Court of Cebu, Civil Case No. 10354, against respondent Pedro Clavano, was filed. * * *; d) That the Municipal Court, after denying respondent Pedro Clavano's motion to dismiss and its subsequent motion to suspend hearing, tried the case on its merits and judgment was rendered on June 30, 1966, in favor of petitioners but granting to respondent Pedro Clavano, the right to recover P10,000.00 for the improvement and to remain in possession of the land until fully paid with right to buy the land should petitioner University of San Carlos fail to pay respondent, Pedro Clavano, within 90 days the amount of P10,000.00; e) That petitioners not being satisfied with the decision, appealed the judgment to the Court of First Instance; f) That in the Court of First Instance of Cebu, where the case was elevated on appeal, no motion to dismiss was filed and the case was tried on the merits. The question of ownership as well as who had a better right to the property were considered and pertinent oral as well as documentary evidence were submitted by respondent Pedro Clavano; g) That on April 24, 1968, the Court of First Instance of Cebu, after a lawful and due hearing and trial, rendered its decision in favor of petitioners and ordering defendant to vacate the premises, ruling that respondent is not a builder in good faith; h) That the Resolution of the Respondent Judge, Hon. Mateo Canonoy setting aside its Decision, is predicated on the proposition that the cause of action accrued on June 10, 1960, when petitioners made its first demand for respondent Pedro Clavano to vacate and not on May 14, 1962 when the second demand was made." [7] In the answer filed on October 7, 1968, there was no denial that in the second letter of demand of May 14, 1962, respondent Clavano was required to vacate the premises within thirty days from its receipt and to pay the rentals in arrears. [8]

On the above decisive undisputed fact that the filing of the action for ejectment was within the one-year period after the second letter of demand of May 14, 1962, the challenged order of reconsideration of respondent Judge of June 25, 1968 as well as the later order of August 6, 1968, wherein respondent Judge maintained his stand, cannot be sustained. In *Sy Oh v. Garcia*, [9] we reaffirmed in categorical language the controlling principle that "the one-year period is to be counted from the last letter of demand." Reference was there made to a 1967 decision, *Calubayan v. Pascual*, [10] wherein the same doctrine was given expression. Thus: "Even assuming, for the sake of argument, that the various notifications for defendant to see the plaintiffs could be construed as demands upon the defendant to vacate, the length of time that defendant detained the premises is to be reckoned with from the date of the last demand." [11] The year before, in *Racaza v. Susana Realty, Inc.*, [12] it was held: "Moreover, even if the action were based on non-payment of rent, the one-year period should be reckoned [with] from the second notice, on the theory that respondent has the right to waive his action based on the first demand and to let the lessee remain in the premises." [13] As a matter of fact, it was expressly set forth in the *Sy Oh* opinion: "Such a view has been steadfastly adhered to by us ever since the 1913 opinion of *Lucido v. Vita*. What would have been objectionable would have been a departure therefrom by the lower courts." [14]

Respondent Judge, in his order of August 6, 1968, apparently was misled by a 1966 decision, *Desbarats v. Segarra*,^[15] where the one-year period for filing the ejectment suit was computed from the first letter of demand as there was an absence of tolerance or waiver on the part of the landlord. The reliance is misplaced. Such a ruling does not call for application here on the facts as disclosed. Rather, what is to be emphasized in the opinion in *Desbarats* by Justice Barrera is the following excerpt: "For, although it is true that the lessee was required to pay the rentals or vacate the premises by letter of March 11, 1955, which should make the lessee's possession unlawful from that time, the lessor has also the privilege to waive the right to bring the proper action, or to allow the lessee to continue in his occupation, thereby legalizing the same. Thus, in one case, where despite the lessee's failure to pay the rent after the first demand, the lessor did not choose to bring an action in court, but 'suffered the lessees to continue occupying the lands for nearly two years', the lessor's inaction was construed as waiver of his right to file the case, and his tolerance of the lessees' possession of the property, considered to have legalized the said otherwise unlawful possession. Consequently, the cause of action for illegal detainer was therein declared to have accrued only when the second demand for rents and for surrender of possession was not complied with."^[16]

Nor should it be lost sight of that if an attempted distinction were made, the Court in the *Desbarats* case, had to do so as otherwise the *accion publiciana* filed by the landlord for the recovery of possession could be deemed objectionable. What emerges clearly, then, is the reluctance on the part of this Court to justify a wilful refusal on the part of a person no longer entitled to possession to continue the same. This is the fundamental assumption ignored by respondent Judge. Hence, the propriety of this petition for certiorari.

WHEREFORE, the writ of certiorari prayed for is granted, the resolution of June 25, 1968 granting respondent Clavano's motion to reconsideration as well as the order of August 6, 1968 denying the motion of petitioners to set aside the reconsideration are held void and declared to be without any legal force or effect. The decision of April 24, 1968 by respondent Judge is thus reinstated and affirmed. With costs against respondent Clavano.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Concepcion, C.J., on official leave.

[1] Civil Case No. R-10354 of the Court of First Instance of Cebu, Branch III.

[2] Petition, paragraph III.

[3] Annex A, Petition.

[4] Petition, paragraph IV.

[5] *Ibid*, paragraph V.

[6] Resolution of June 25, 1968, Annex C, Petition.

[7] Petition, paragraph VIII.

[8] Answer, paragraph IV.

[9] L-29328, June 30, 1969, 28 SCRA 735.

[10] L-22645, Sept. 18, 1967, 21 SCRA 146.

[11] *Ibid*, p. 149.

[12] L-20330, Dec. 22, 1966, 18 SCRA 1172.

[13] Ibid, p. 1177.

[14] L-29328, June 30, 1969, 28 SCRA 735, 738. Lucido v. Vita is reported in 25 Phil. 414 (1913). Cf. Canaynay v. Sarmiento, 79 Phil. 36 (1947) and Zobel v. Abreu, 98 Phil. 343 (1956).

[15] L-21875, Sept. 27, 1966, 18 SCRA 116.

[16] Ibid., p. 120.

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