

SUSANO AMOR, PLAINTIFF-APPELLEE, VS. FRANCISCO GONZALEZ, DEFENDANT-APPELLANT.*G.R. No. L-91. April 12, 1946*

Ponente: HILADO, J.

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In civil case No. 70519 of the Court of First Instance of Manila, Branch II, which involved an appeal from a judgment rendered by the municipal court of the same city, Susano Amor was plaintiff and appellee, and Francisco Gonzalez defendant and appellant. The controversy concerned the premises known as No. 2248, Rizal Avenue (second floor). Having failed to file his answer within the prescribed time, said defendant was declared in default by the Court of First instance; but the order of default was lifted on the day of the hearing with the plaintiff's conformity.

The evidence fully establishes the following facts, as to the plaintiff's first cause of action:

That around the month of March, 1944, the plaintiff, owner of the premises in controversy, secured a judgment against one Rosario Lozano ejecting the latter from the said premises; that the plaintiff was unable to take possession of the said premises because the defendant, without his knowledge and consent, entered the premises and since then had been occupying the same; that despite the plaintiff's repeated demands for the surrender of the possession of the aforesaid premises he had been unsuccessful in his efforts prior to the institution of his action in the Municipal Court; and that the defendant has failed to pay the reasonable "rents" (they should more properly be called the reasonable monthly value of the use and occupation of the premises due to the absence of a contract of lease between the parties) of P40 a month since the 16th of March, 1944.

With regard to the plaintiff's second cause of action, he has sufficiently proven: that the defendant had before the filing of the original suit been occupying the premises known as the second floor of No. 2250, Rizal Avenue, of which the plaintiff is the owner; that because he lost the house which he was using for residence, the plaintiff asked the defendant to vacate the premises here in question, but the defendant refused to do so; and that when the judgment appealed from was rendered on August 2, 1945 the defendant was in arrears in the payment of rents (P40 a month) since July 16, 1943.

As stated by the court of first instance, the defendant's defense consists in that the plaintiff is a person of means; that he has various houses in the City of Manila and that, therefore, he is not in need of the premises in question, his needs being very much less than those of the defendant. As to this defense the court well said that while it sympathized with the defendant and would wish to help him, "in the adjudication of the case, its course can only be determined by the evidence on record, and the evidence favors the plaintiff." Said court, therefore, rendered judgment, ordering the defendant to vacate the premises known as the second floor of houses Nos. 2248 and 2250, Rizal Avenue, and to deliver the possession thereof to the plaintiff; to pay the "rents" at the rate of P40 a month beginning March 11, 1945, for the second floor of house No. 2248, and at the same rate for the second floor of house No. 2250, the "rents" to be paid until the defendant vacates the premises.

Counsel for appellant Francisco Gonzalez has filed a single brief in the instant case and in cases G.R. Nos. L-90 and L-223,[1] and in the first assignment of error in said brief he assails the original jurisdiction of the municipal court and the appellate jurisdiction of the court of first instance over this case as well as in the other two, basing his objection upon the allegation that the cause of action accrued more than one year prior to the commencement of the original suit. This contention is untenable. The point was not raised either in the municipal court or in the court of first instance. On the contrary, both parties filed their respective pleadings and proceeded with the trial of the instant case on the merits in the court of first instance without any objection to said court's jurisdiction, the contention having been advanced for the first time on this appeal. The causes of action in this case, as established by the evidence, accrued much less than one year before the suit was brought in the municipal court.

Anyway, however, even in case of lack of jurisdiction over the subject matter on the part of an inferior court (such as the municipal court of Manila), under such circumstances as obtain in this case, Rule 40, section 11, provides:

"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 in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction." (*Italics supplied*)

Finding the judgment appealed from in accordance with the facts and the law, we affirm the same with the costs in the three instances against the defendant.

SO ORDERED.

Ozaeta, De Joya, Perfecto, and Bengzon, JJ., concur.

[1] Pp. 481, ante, and 487, post.

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