

EMILIO J. ANDRES AND PAZ BASA ANDRES, PETITIONERS, VS. HON. E. SORIANO, RUPERTO LISING AND NENITA REYES LISING, RESPONDENTS.*G. R. No. 10311. June 29, 1957*

Ponente: PADILLA, J.

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On 17 August 1955 the petitioners brought an action for detainer against the respondent Lisings in the Municipal Court of Manila. After denying the defendants' motion to dismiss the complaint and hearing, the Court rendered judgment ordering the respondent Lisings to vacate the premises described in the complaint and to pay the petitioners P30 a month beginning June 1955 for the use and occupation of the premises until they shall have actually vacated and restored the possession thereof to the plaintiffs, P50 for attorney's fee, and costs. From this judgment the respondent Lisings appealed to the Court of First Instance of Manila by filing in due time a notice of appeal and, appeal and supersedeas bonds. During the pendency of the appeal, or on 11 January 1956, the petitioners moved; for execution of the judgment of the Municipal Court, on the ground that the respondent Lisings failed to pay or deposit the monthly rental of P30 for December 1955 during the first 10 days of January 1956. The respondent Lisings objected. On 24 January 1956 the Court of First Instance of Manila denied the motion for execution for the reason that the Municipal Court had no jurisdiction of the case, the question of ownership or title to the premises being involved or litigated, and set the case for hearing of the case in the exercise of its origin

There is no plausible reason for disturbing the ruling made by the respondent Court to the effect that "the question of title or ownership is necessarily involved" in the case or for reversing its order that the "case be set for trial on the merits on 24 February 1956 at 8:30 a.m. in the exercise of the original jurisdiction of this court under section 11, Rule 40 of the Rules of Court." The record shows that both the petitioners and the respondent Lisings consistently claim ownership over the premises in question. The petitioners claim that they are the owners of the building on 14-C Lerma, Sampaloc, Manila, where a billiard hall is being run and operated, and that they allowed the respondent Ruperto Lising to reside there as their employee in charge of the billiard hall. The respondent Lisings, on the other hand, deny vehemently this claim, alleging that they are the owners of the building and that the true contract of lease is that executed on 14 June 1954 where they, as owners, are the lessors, and the petitioners, their tenants or lessees. The petitioners base their claim of ownership of the premises upon an agreement of sale entered into between them and the respondent Lisings on 21 July 1954. The respondent Lisings, however, assail vigorously the validity of the agreement, on the ground that they were deceived and misled to si

The petitioners maintain that there exists a relationship of landlord-employer and tenant-employee between them and the respondent Lisings by virtue of the contract of lease entered into by and between them on 22 July 1954, where it is stipulated among other things, that the respondent Ruperto Lising shall occupy, free of charge, the mezzanine floor of the building at No. 14-C Lerma, Sampaloc, Manila, as incharge of the billiard hall to be operated therein, and that he shall be given a compensation to be mutually agreed upon by them later on, which may either be a percentage or a fixed amount. The petitioners argue that because of the contract of lease dated 22

July 1954 the respondents have admitted their status as mere tenants, and that, consequently they cannot be permitted to deny the title of the petitioners as their landlords at the commencement of the relationship of landlord and tenant between them, relying upon section 68(6), Rule 123, on conclusive presumptions and upon the case of *Sevilla vs. Tolentino*, 51 Phil. 333. However, an examination of the pleadings filed in the case reveals that the contract of lease dated 22 July 1954, upon which the petitioners based their action for detainer against the respondent Lisings in the Municipal Court, was not attached to the complaint and pleaded, as required by secti

The petition for mandamus and injunction ig denied, with costs against the petitioners.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1] *Teodoro vs. Balatbat*, 94 Phil., 277, 50 Off. Gaz. 601; and *Cana-veral vs. Encamacion*, 9o Phil.,, 848, 50 Off., Gaz. [10]- 4769.

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