

JULIANA MELLIZA, PLAINTIFF AND APPELLEE, VS. PABLO ARANETA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 10531. February 25, 1916*

Ponente: TRENT, J.

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This is an appeal from a judgment of the Court of First Instance of Iloilo in favor of the plaintiff, Juliana Melliza, and against the defendants, Pablo Araneta, Natividad Buenaflor, and Joaquin Gayoso, for the rescission of the contract, dated September 18, 1912, for the possession of the hacienda, animals or their value, etc., for the sum of P2,600, the amount of the first year's rent, and for P2,500 per year thereafter so long as the possession of the property is withheld, and for costs of the cause.

Counsel for the appellants insists that the trial court erred (1) in not finding that the plaintiff had failed to comply with the terms of the contract; (2) in not condemning the plaintiff to indemnify the defendants for the damages caused as a result of the breach of the contract; (3) in condemning the defendants to pay rents for the use and occupation of the hacienda; (4) in finding that the plaintiff acted within the law and without malice in obtaining the writ of attachment; and (5) in failing to render judgment in favor of the defendants and against the plaintiff for the damages sustained by them on account of the wrongful issuance of the attachment.

The amended complaint in this case was filed on August 12, 1912, and the writ of attachment was issued on the same day and executed by the sheriff soon thereafter. The defendants made no effort to have the property thus attached released in accordance with the provisions of section 428 of the Code of Civil Procedure, but they did execute a bond sometime in October, 1914, to stay the execution of the judgment pending appeal and to secure the release of the property attached, which consisted of the lot in Iloilo, the growing crop on the hacienda in question, and the defendant Araneta's growing crop in Barotac.

The contract, which was duly executed before a notary public on September 18, 1912, was to run for five agricultural years, terminating in May, 1918. It was agreed by and between the parties that:

"Dona Juliana Melliza cedes and leases to the parties of the second part her hacienda situated in the district of Cordoba, Municipality of Tigbauan of Iloilo, which contains 400 hectares, according to the plan made by the surveyor Mr. Omana in 1895, together with its buildings, machinery, furnace, wagons, tramway with its rails and cars, all in a good state of preservation."

The inventory or the receipt for the twenty-nine animals, wherein the value of each is set forth, all amounting to P3,050, was signed by the defendants on September 23, 1912. Another receipt for one more animal, value not given, was signed by the defendant, Joaquin Gayoso, on September 18, 1913. The inventory or receipt for the buildings, machinery, etc., was signed by the plaintiff, Juliana Melliza, and the defendant, Pablo Araneta, on the 31st of October, 1913.

It is urged that the noncompliance with the terms of the contract on the part of the plaintiff consisted of the following: (a) That the hacienda "Cordoba" does not have the superficial area stated in the contract, there being 20

hectares of the best quality of land in possession of other persons; (b) the plaintiff failed to turn over to the defendants a single wagon, and the tramway, consisting of the cars, track, etc., were in such condition that they could not be used; and (c) the buildings and machinery were not in good condition for use, and notwithstanding the fact that the plaintiff had been so notified, she failed to make the required repairs.

Before the contract was signed the defendants went upon the premises and inspected the hacienda, the buildings, machinery, animals, and everything else connected therewith. Having the plan of the hacienda, which was later made a part of the contract, they could easily locate the boundaries. The hacienda contains 400 hectares. The first year the defendants cultivated only about 50 hectares. It may be, as indicated by the trial court, that there were one or two small parcels, at most about 20 hectares, on the edge of the hacienda in the possession of other persons, which the parties thought were included in the contract, but these parcels, being on the extreme opposite side of the hacienda from the mill and being so small and of so little value as compared with the enormous tract not under cultivation, that their exclusion would cause very little, if any, damage to the defendants. The defendants contend that the tramway and cars were in such bad condition that they could not be used and that they so notified the plaintiff soon after taking possession of the hacienda. The plaintiff claimed that the tramway and cars were in fairly good condition, that she used them in gathering the former crop, which was finished a short time before signing the contract, and that the defendants never made a complaint to her about the condition of the tramway. Upon this question of fact the trial court found for the plaintiff and we see no reason for disturbing this finding of fact. The defendants could not have been very seriously damaged by reason of the condition of the tramway, because they cultivated such a small portion of the hacienda the first year. As to the buildings, machinery, etc., it is very clear that the defendants have failed to establish their contention upon this point. They took possession of the hacienda, as we have said, on September 18, 1912, and signed the inventory for the buildings and machinery in October, 1913. They were in possession of the property for more than a year before signing this inventory and, of course, knew all about the condition of the buildings and machinery. They made no complaint in the meantime and if these things had been in such a condition that they could not be used, it is quite strange that the defendants would have signed an inventory for them long after discovering their condition. The whole defense as to the breach of the contract on the part of the plaintiff was injected into the case for the sole purpose of escaping the payment of the rents stated in the contract. These questions were not raised by the defendants until very near the time when the first year's rent was due. They did not pay this rent or any of it when it fell due in March; neither did they pay it in April, which they had a right to do under the contract, by paying P100 extra, and they did not attempt or offer to pay any rents up to the time this case was decided in the court below, notwithstanding the fact that they were still holding the possession of the hacienda, receiving the products therefrom, and at the same time claiming that there was no contract because the plaintiff had broken it. Their own theory shows that they are attempting to reap the benefits of the hacienda without a contract, as they contend, and without paying any amount for the use and occupation thereof. They cannot insist that there is no contract and at the same time reap the benefits of it. If the defendants had been consistent, they would have offered to return the hacienda and the other property upon discovering, as they claim, that the plaintiff had failed to comply with the terms of the contract. They did not do this, but insisted upon holding and using the hacienda, animals, etc., and claim that the plaintiff should pay them a large sum aside from the products derived from the property.

As to the contention of the defendants that the lower court erred in failing to render judgment against the plaintiff for the damages sustained on account of the issuance of the writ of attachment, it is very clear that this contention is equally unfounded. The property was attached about the middle of August and released about the middle of October. The attached property consists of a house in Iloilo, the growing crop on the hacienda Cordoba, and the defendant Araneta's growing crop in Barotac. The house was not injured by the attachment, neither were the growing crops, because they were not ready for harvest during the two months. So it is clear that the defendants

have failed to prove that they have been damaged by reason of the issuance of the writ of attachment.

For the foregoing reasons, the judgment appealed from is affirmed, with costs against the appellants. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

Moreland, J., see concurring opinion.

CONCURRING OPINION

MORELAND, J.:

While I have some doubt about the form of the judgment I cannot, if I should desire, base anything thereon as no question is here raised in respect thereto.

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