

YU CHIN PIAO ET AL., PLAINTIFFS AND APPELLANTS, VS. ADELINA LIM TUACO ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 10968. December 24, 1915*

Ponente: MORELAND, J.

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In this action it appears that plaintiffs and defendants, being the heirs at law and next of kin of one Jose Santiago Tiaoqui, deceased, and desiring to settle amicably the estate of the deceased and divide the property between them without litigation, entered into an agreement wherein and whereby the property was duly and equitably partitioned among them. One of the clauses in the agreement of partition, and the one on which this action is brought, provided that the defendants would rent to the plaintiffs a certain building used as lumber yard consisting of Nos. 155-179 Gandara Street and 130-144 Lacoste Street, for the sum of P250 a month from the beginning of the 1st of March of the year in which the agreement was made, and to continue "so long as the tenant paid the stipulated rent of two hundred and fifty pesos (P250)." As time ran on the plaintiffs felt that the indefinite nature of their tenure was inimical to their interests and that some arrangement should be made between them and the defendants whereby the term of the lease could be made definite and certain. Being unable to make a satisfactory arrangement with the defendants out of court, this action was begun to ask the court to fix a definite term during which the lease should continue. The cause was duly tried in the Court of First Instance of the city of Manila and the court decided that the term of the lease should be fixed at 15 years on condition that plaintiffs should pay to defendants the sum of P2,000, which represented the value of improvements that the defendants had put into the buildings since the lease began. Plaintiffs appealed from that judgment and that appeal is now before us. Appellants assign three errors: "(1) That the lower court erred in holding that defendant appellee had spent in improvements P2,000 or any other sum on the property in question; (2) that the lower court erred in condemning plaintiff appellant to pay to defendant the said sum of P2,000 or any other sum; and (3) that the lower court erred in not fixing a term of more than 15 years from March 1, 1915, as the term of the lease."

We are of the opinion that appellants' appeal must be sustained as to that portion of the judgment appealed from requiring plaintiffs to pay defendants P2,000. There is no evidence in the record that the defendants improved the property to that amount or to any other amount; and there is no admission of plaintiffs on which a finding that such improvements had been made could be based. The trial court states in its decision: "Bearing in mind that the defendant, according to the allegations of the answer, which are not denied by plaintiff, has spent two thousand pesos (P2,000) in improvements on the land and that the contract of lease has been in force since the 1st of March 1909, it appears to the court that the 20 years claimed by the plaintiff is too long a period."

It would seem from the quotation that the trial court understood that the plaintiffs, by not denying the allegations of the answer, admitted them and that the judgment as to the P2,000 waB founded on that assumption. We regard this as erroneous for the reason that it is provided by section 104 of the Code of Civil Procedure that: "The plaintiff may reply to any new matter or special defense set up in the defendant's answer by an amendment to his complaint, which may be filed as a matter of course and without terms, within a period to be fixed by general

rules of court If the plaintiff does not amend his complaint, as provided in this section, he shall be deemed to have controverted every material statement of the answer."

The Supreme Court has held, by virtue of this section, that the material allegations of an answer are deemed to be denied by the plaintiff although no reply is actually filed and the complaint not amended to meet such allegations. (Go Tiam Ting vs. Di Ping Jo, 11 Phil. Rep., 10; Herranz & Garriz vs. Barbudo, 12 Phil. Rep., 5; Pimentel vs Gutierrez, 14 Phil. Rep., 49.)

Appellee asserts in his brief: "On the trial both parties renounced their right to present evidence, each one admitting the allegations contained in their respective pleadings and submitting the case to the decision of the court."

The plaintiffs deny this and assert that no such admission was made with respect to the allegations of the answer and refer to the record to sustain their denial. From the record it appears that the case was called for trial on the 26th of February 1914. Mr. Aitken appeared for plaintiffs and Mr. Perfecto Gabriel for defendant. The only entry made at that time or at any time during the trial is as follows: "Both parties, in view of the admission by the defendant of the facts alleged in the complaint, refrain from presenting evidence, the question to be decided being one of law, which was submitted to the court together with the contract of lease executed between the parties covering the land described in the complaint."

From this entry it is clear that the only admission made was by defendant. It is apparent that plaintiffs made no admission with respect to the allegations of the answer, not only from this entry but also from the fact that the court in making the finding with respect to the P2,000 did not base it on any express admission of plaintiffs made during the trial but, rather, on their failure to deny the allegations of the answer, This is, as we have seen, insufficient.

That the court has authority to fix the term of a lease drawn in the manner in which the lease in question was executed is not an open question. (Eleizegui vs. Manila Lawn Tennis Club, 2 Phil. Rep., 309; Soriano vs. Heirs of Roxas, 4 Phil. Rep., 638; Barretto vs. City of Manila, 5 Phil. Rep., 416; Iturralde vs. Garduno, 9 Phil. Rep., 605; Seoane m Franco, 24 Phil. Rep., 309; art. 1128, Civil Code.)

The plaintiffs contend that the term of the lease should be fixed at 30 years. We are of opinion that appellants have shown no sufficient reason why the decision of the trial court should be disturbed on this point. The conclusion is based on the condition of the property and its rental value compared with that stated in the lease in question and of the improvements which will have to be made on the buildings from year to year and the fact that the lessor is a minor. No well founded reason has been offered by the appellants to change this conclusion or which would Require ua to alter the term fixed by the trial court.

The judgment appealed from is modified by striking therefrom that portion requiring plaintiffs to pay to defendants the sum of P2,000, and, as so modified, is affirmed, without special finding as to costs in this instance. So ordered.

Arellano, C.J., Torres, Carson, Trent, and Araullo, JJ., concur.

Judgment modified.

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