

ROSENDO HERNAEZ Y ESPINOSA, ADMINISTRATOR OF THE ESTATE OF JUANA ESPINOSA, PLAINTIFF AND APPELLEE, VS. ALEJANDRO MONTELIBANO Y RAMOS, DEFENDANT AND APPELLANT.*G.R. No. 11270. September 19, 1916*

Ponente: TORRES, J.

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This appeal by bill of exceptions was raised by counsel for the defendant from the judgment of December 22, 1914, whereby the judge of the Court of First Instance of Occidental Negros declared that the defendant was not entitled to the possession of the Matagoy No. 1 Hacienda, described in the complaint, until such time as the property of the estate of the deceased Juana Espinosa was partitioned among her heirs, and ordered him to deliver and restore to the plaintiff Rosendo Hernaez y Espinosa, the administrator of the said estate, the possession of the aforementioned hacienda, after harvesting the crops shown thereon, and further ordered the defendant to pay to the plaintiff-administrator, as rental, the sum of P300 for the year 1909, and P400 per annum for each year subsequent to 1909 (which sums should have been paid during the month of January of the corresponding year) until the judgment should be executed, together with legal interest on said sums at the rate of 6 per cent from February 13, 1913; the right was reserved to the defendant to bring the proper action against the plaintiff-administrator to recover for the improvements the defendant had made on the said hacienda; without special finding as to costs.

On February 17, 1913, counsel for Rosendo Hernaez y Espinosa filed a written complaint in the Court of First Instance of Occidental Negros, in which he alleged as a cause of action that Juana Espinosa left at her death various real properties, among which was an estate known by the name of Matagoy No. 1 Hacienda, situated in the pueblo of Silay, the area, metes and bounds of which are set forth in the complaint; that in 1907 the defendant leased the said hacienda from the plaintiff for a period of four years, extendible for only one year, at a rental of P300 for the year 1909, payable during the month of January, and P600 per annum for the succeeding years, payable also during the month of January of each respective year; that it was agreed furthermore that the defendant should construct a camarin, or a frame building, of strong materials, with an iron roof, and a masonry furnace with five vats and a steam engine with the mill thereto pertaining; that the plaintiff was to have the right to buy the said mill and engine at a just and reasonable price, but in case he did not make such purchase, the defendant was to remove the said mill and engine and at the same time replace the mill operated by animal power which stood on the hacienda when he took possession; that when the term of the lease expired in June, 1912, the contracting parties agreed to extend the said contract for another year for the sum of P1,000; but that the defendant had not paid even a part of the rentals due since the year 1909, whereby damage had been caused to the plaintiff in the amount of P3,100. Therefore plaintiff prayed the court to render judgment by ordering the defendant to pay to the plaintiff the sum of P3,100, with legal interest from the respective due-dates thereof.

The demurrer filed to the aforementioned complaint having been overruled, the defendant's counsel answered by & general and specific denial of all the allegations contained in the complaint, and in counterclaim alleged that as

the defendant was the assignee of five-eighteenths and one-third of one-eighteenth of the rights and actions in the estate of the decedent Juana Espinosa, which part of said rights and actions had pertained to several of the tatter's lawful successors in interest, the defendant in 1907 petitioned the administrator of the estate of the said decedent to take account of his, the defendant's, rights in the councils of administration of said estate and in the enjoyment of the property appertaining to this latter, and that, therefore, the administrator granted to the defendant the possession of the hacienda described in the complaint until such time as the property that had belonged to the said decedent should be distributed; that the annual rental of the said hacienda was fixed at P300 for the first year and at P400 per annum for each subsequent agricultural year; that these amounts were to be charged against and deducted from the share which the defendant was to receive of the property of the said decedent's estate, which was still under administration by order of the Court of First Instance; and that the defendant had constructed on the hacienda a camarin or frame building, of galvanized iron, had installed thereon a five-horse-power steam engine, together with its boiler, and a furnace with European vats, and had dug an artesian well, all valued at P13,000, which sum the plaintiff Rosendo Hernaez refused to pay even after he had taken possession of the said hacienda. Defendant therefore prayed the court to absolve him from the complaint and declare him to be entitled to the possession of the said hacienda until the day of the final distribution of the property left by the deceased Juana Espinosa, and to order the plaintiff to pay him the sum of P13,000, with legal interest thereon.

After the hearing of the case and the introduction of evidence by both parties, the court rendered the judgment aforementioned, to which the defendant excepted and in writing moved for a reopening of the case and a new trial. This motion was overruled, exception was taken by the defendant, and, upon the filing of the proper bill of exceptions, the same was approved and transmitted to the clerk of this court.

The questions to be decided herein are whether a contract of lease was executed by and between the litigant parties, and whether the defendant occupies the Matagoy No. 1 Hacienda by virtue of that contract.

If the defendant Alejandro Montelibano, as the assignee of certain interests in the rights pertaining to several of the successors of the deceased Juana Espinosa, took possession of the said hacienda by a grant made to him by the plaintiff until the said decedent's estate should be settled and distributed; if for that reason the annual rentals of the hacienda were to be charged against the defendant's share, and if, on that understanding, the plaintiff-administrator of the estate of the deceased Espinosa had bound himself to pay the value of the said improvements, then there was no contract of lease such as the plaintiff alleged.

But it was proven at the trial that the aforesaid contract of lease, by virtue of which the plaintiff gave the defendant a lease of the hacienda in question, was actually entered into. The duplicate of the instrument containing the said contract was lost, and as the defendant refused to exhibit his own duplicate the plaintiff proceeded by means of witnesses to prove the contents of the said lease under which the defendant Montelibano is now in possession of the disputed property.

Attorney Jose Hernaez testified that he drew up the declaration in these proceedings and took all the details therein contained from the original contract of lease furnished him by the plaintiff, and that he had lost the said document on a journey he made to Iloilo and Cebu about the month of February, 1913. Witness remembered that the said contract had been executed in July, 1907, for which reason the defendant took possession of the said hacienda as lessee and bound himself to pay a rental of P300 in January, 1909, and of P600 per annum in the month of January of each of the succeeding years of the lease, the term of which was fixed at four years; that the defendant-lessee further obligated himself to construct on the premises a camarin, or frame building, of strong materials with a galvanizing-iron roof, for the grinding of sugar cane, also to install a masonry cooking furnace provided with five European vats, all of which improvements were to remain in benefit of the hacienda at the termination of the period of the lease, without reimbursement of their cost to the lessee, and, finally, that the said

contract contained a special stipulation to the effect that the defendant might substitute the mill operated by animal power that was on the said hacienda, by a steam engine, the plaintiff having an option to buy the latter from the lessee for a fair price at the expiration of the lease; if he did not buy it, the lessee was to remove the said steam engine to some other place, at his own expense, and to reinstall the old mill operated by animal power that was on the hacienda when he took possession.

The foregoing allegations appear to be corroborated by the plaintiff Rosendo Hernaez and by Vicente Treyes and Leoncio Jutic, who were the attesting witnesses to the said contract of lease executed by and between the plaintiff and the defendant. The plaintiff also added that he had extended the term of the lease to one year more for the price of P1,000, and that up to the present the lessee had not paid him either the rentals pertaining to the first four years of the lease, or those of the fifth year, notwithstanding that the defendant continued in possession of the hacienda and refused to return it, and that, by its detention, the plaintiff had suffered losses and damages, inasmuch as during the time of the 1912-1913 crop Gerardo Villalobos offered to pay him P1,500 for the lease of the hacienda and he was unable to accept the offer because the defendant was in possession of the property. It is to be noted, however, that the plaintiff himself stated that the extension of one year which he had granted to the defendant was from the month of June, 1912, to the end of the 1913 harvest season.

Gerardo Villalobos corroborated the foregoing testimony and added that he offered to lease the hacienda in June, 1912, "just as it is," with the improvements which the defendant had placed thereon. Demetrio Gamboa also stated that he had offered the plaintiff the sum of P1,000 for the lease of the same hacienda, about the month of June, 1911 (while the contract of lease with the defendant was still in force).

The defendant presented in evidence the documents Exhibits 2 to 7, inclusive, to prove that since 1905 he had been buying little by little the shares that pertained to Leoncio Jutic, Mateo Hernaez, Domingo Hernaez y Espinosa, and Peregrina Jarapa y Hernaez, as the heirs of the deceased Juana Espinosa, the plaintiff's mother, to whose estate, according to the inventory Exhibit 1, the Matagoy No. 1 Hacienda belongs. The plaintiff admitted that the defendant's cessionaries were heirs of the plaintiff's mother, the said Juana Espinosa. The defendant stated under oath that he had covenanted with the plaintiff Rosendo Hernaez that as long as the property left by Juana Espinosa should remain pro indiviso the defendant should be entitled to occupy the disputed hacienda at a rental of P300 for the first harvest and P400 for the subsequent ones; that these rentals were to be charged against the hereditary share that might be assigned to him on the final distribution of the property, and be deducted therefrom; that he had a right to construct such camarines and other buildings as he might deem proper; that he put the following improvements on the hacienda: a frame building of strong materials, with an iron roof, valued at P2,500; a five-horse power steam engine with its corresponding boiler, which cost P6,250; a masonry furnace with two sets of vats, one of three and the other of five, which cost P2,000; and an artesian well, the boring of which cost P350.

The plaintiff testified that the defendant entered upon the possession of the said property in the capacity of lessee and not in that of assignee of the hereditary rights of his coheirs; that only about January 3, 1913, according to the agreement found on page 58 of the record, did he hear that the defendant claimed to be entitled to share in the estate of Juana Espinosa. This testimony was corroborated by the petition Exhibit A presented by the defendant in the Court of First Instance of Occidental Negros, in which he prayed that he be declared the assignee of the rights and actions of certain heirs of the deceased Juana Espinosa, which petition, in view of the opposition filed by the plaintiff Rosendo Hernaez, was dismissed on January 23, 1913, in order that the interested parties might bring the proper actions in separate proceedings.

So that prior to the month of January, 1913, the defendant could not be considered to have a right in the hereditary property of his assignors, because he had not yet been declared by the probate court as having such right and,

besides, because the plaintiff had no knowledge, even extra-judicial, of such a grant of rights in favor of the defendant; whence it logically follows that in 1907, when the plaintiff entered into the contract of lease with the defendant for the Matagoy No. 1 Hacienda, for the term of four years, extendible for one year more, the latter was not vested with the quality of heir, but as a simple private person he leased the said hacienda under the terms and conditions shown in the record. Therefore the defendant is obliged to fulfill the conditions to which he bound himself, for it is a well-settled rule that the will of the parties is the law of the contract and must be faithfully observed by them, unless the contract be contrary to law, good morals or public order.

Starting from the premise that the defendant is now in possession of the leased hacienda, and has been in possession since the date of the contract, the record does not disclose that he, as lessee, has complied with his principal obligation to pay the price of the lease (art. 1555, Civ. Code). For this reason he is a defendant in these proceedings, and therefore, without prejudice to his being compelled to pay the rentals stipulated and not paid, he should also be obliged to return the said hacienda after the annual crop has been gathered (art. 1561, Civ. Code), for article 1569 of this same code authorizes the lessor judicially to dispossess the lessee, among other causes, on account of the expiration of the term agreed upon and default in payment of the price stipulated between the interested parties.

In the judgment appealed from it is ordered, among other things, that the defendant shall restore to the plaintiff the possession of the said hacienda immediately after the gathering of the crop there may be thereon, notwithstanding that in the last paragraph of the complaint no demand was made for the return or restitution of the hacienda by the lessee to the plaintiff lessor, though such return appears to be indicated in the allegations and statement of facts contained in the complaint; and as the said ruling of the court ordering the restitution or return of the Matagoy No. 1 Hacienda to the lessor has not been specifically objected to by the defendant-appellant nor assigned as an error committed by the trial judge in so ordering, it would be improper to make any specific finding on this point, seeing that the contract of lease is rescindible whenever any of the obligations imposed by law has not been fulfilled, among others, that of paying the price of the lease in accordance with the terms agreed upon. Therefore it is unquestionable that the lessor has a right to recover the possession of the hacienda improperly detained by the lessee, by reason of the latter's violation of the said contract (art 1656, Civ. Code).

An error that has not been assigned by the appellant in his brief or discussed during the course of the proceedings in both instances, cannot be considered by the Supreme Court in its final decision of the case. (Rule 20, Rules of the Supreme Court.)

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, and as the said judgment is in accordance with the law, we deem it proper to affirm the same, with the costs against the appellant. So ordered.

Johnson, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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