

ANACLETO MENDOZA, PLAINTIFF AND APPELLANT, VS. MANUEL ARELLANO AND FILOMENA B. DE ARELLANO, DEFENDANTS AND APPELLANTS.*G.R. No. 11373. January 13, 1917*

Ponente: CARSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11373/>**CARSON, J.:**

Plaintiff-appellant instituted summary proceedings (forcible entry and detainer) in the court of the justice of the peace of Manila for the recovery of possession of certain real estate, and of rent for its use and occupation, alleging that defendant was in possession under the terms of a rental contract entered into with the plaintiff; that the term of the rental contract had expired; and that defendant had failed and refused to pay the stipulated rent for several months prior to the close of the term. Defendant answered alleging that he is the owner of the land in question, that the alleged rental contract was a mere simulated and fictitious contract, a part of a simulated and fictitious contract of sale with reserved right of repurchase (*pacto de retro*) which had been executed as a cloak to conceal the true nature of the contract actually entered into, which, as defendant alleged, was in truth and in fact a contract in the nature of a mortgage, whereby title to the real estate was conveyed to the plaintiff as security for the repayment of a loan.

The justice of the peace dismissed the complaint on the ground that he was without jurisdiction, because the issues raised by the pleadings involved questions of title to real estate. Appeal was taken to the Court of First Instance from the judgment of dismissal, and that court reversed the order of dismissal and remanded the record to the justice of the peace with instructions to certify the record to the Court of First Instance in accordance with the provisions of the second paragraph of section 68 of Act No. 136 as amended by section 3 of Act No. 1627. The record was certified in due course, and upon its return to the Court of First Instance the plaintiff reproduced and relied upon his original complaint in the court of the justice of the peace. A demurrer to this complaint was sustained, apparently on the ground that in a case thus certified to the Court of First Instance from a court of the justice of the peace the Court of First Instance exercises original and not appellate jurisdiction; that Courts of First Instance have no original jurisdiction to entertain actions of forcible entry and detainer; and that while the complaint set forth facts sufficient to maintain such an action, the facts alleged are insufficient to maintain an action of ejectment in a Court of First Instance. Plaintiff excepted to the various orders of the Court of First Instance above set forth, including the order sustaining the demurrer, and declined to amend his complaint. The case is now before us on plaintiff's bill of exceptions.

We think it is very clear that the various orders entered in the Court of First Instance whereby the record was brought to that court by certificate of the justice of the peace must be sustained. The correct adjudication of the issues raised by the pleadings in the court of the justice of the peace involved "questions of title to real estate or an interest therein." (*Carroll and Ballesteros vs. Paredes*, 17 Phil. Rep., 94; *Falcon and Falcon vs. Barretto*, 26 Phil. Rep., 72.)

Counsel for plaintiff contends, however, that no such question can properly arise, because, as he insists, defendant is estopped from setting up a claim of title by the execution of the contract of sale with a right to repurchase, and by the rule which forbids a tenant from challenging the title of his landlord. But the real issue raised by defendant's pleadings is whether the alleged contract of sale with right to repurchase, including the alleged rental contract, is a valid contract duly executed by the parties, or a fictitious and simulated contract which does not set forth the real nature of the agreement actually entered into by the parties. Counsel's contentions assume the existence of a valid, binding contract; but that is the very question raised by the pleadings. Until that question is disposed of the doctrine of estoppel and the rule which forbids a tenant to challenge the title of his landlord, upon which appellant relies, cannot be invoked.

In the case of *Falcon and Falcon vs. Barretto* (supra) we said:

"In every case where there has been a controversy in this court growing out of a sale with a right to repurchase the question of title has been necessarily at issue. This is because the question of title is the only one that can be raised. In these cases it is contended either that the instrument constitutes a mortgage only or that the payments stipulated therein have not been made. Usually it is contended that the instrument is not a sale with a right to repurchase, but is a mortgage instead. The resolution of that question requires, of course, an interpretation of the instrument. If it is a sale with a right to repurchase, the question then arises as to performance. If the time within which the payment is to be made has expired, the title has become irrevocable in the vendee and he is entitled to immediate possession. On the other hand, if the instrument is a mortgage, or if the payment required by the instrument has been made, or if there has been a tender of payment, or if the vendor has tried in good faith to make the payment required by the contract and has been prevented from so doing by some act of the vendee, then the title has not become absolute and the vendor is entitled to retain possession. In other words, in all of these cases the question of title necessarily arises one way or the other. Until the instrument has been denuded by interpretation no one knows where the title to the premises is; and if the instrument be found to be a sale with a right to repurchase, still no one knows where the title is until the questions revolving around the fact of payment have been settled. Both of these questions affect title, and a bona fide dispute as to either of them will raise the question of title in such a way and to such an extent that it must be one of the necessary determinations of the court trying the cause."

We are of opinion, nevertheless, that the order sustaining the demurrer must be reversed.

The trial judge appears to have been of opinion that an original action for forcible entry and unlawful detainer will not lie in a Court of First Instance. But while we held in *Alonso vs. Municipality of Placer* (5 Phil. Rep., 71, 74) that justices of the peace had exclusive original jurisdiction in actions of this nature for one year from the inception of the unlawful possession, that decision was written prior to the enactment of section 3 of Act No. 1627, and there can be no question that such jurisdiction is conferred on those courts in cases wherein, under the provisions of section 3 of Act No. 1627, one of these actions is duly certified from the court of a justice of the peace; otherwise it would be a vain and useless thing to prescribe, as does that section, that when the adjudication of an action of this kind which has been instituted in the court of a justice of the peace involves questions of title to land, it must be certified to the Court of First Instance. It is certified to that court for trial, under and by authority of the express terms of the statute; and the Legislature, having authorized the proceeding by which the action is brought to the Court of First Instance for trial, must be presumed to have conferred the necessary jurisdiction upon that court to try the action thus brought before it.

The action thus certified to the Court of First Instance is not an ordinary action of ejectment brought to try title, necessitating, as the trial judge appears to have thought, an allegation of ownership and title in the plaintiff. It is a mere possessory action, in which the complaint sets forth facts sufficient to entitle him to possession as against

the defendant, and the judgment finally entered is merely a judgment for possession and damages for the unlawful detention of the property. The proceedings, however, differ from those had in similar actions in courts of a justice of the peace in that the Court of First Instance has jurisdiction, which a court of the justice of the peace has not, to adjudicate and decide any incidental question touching title to real estate which arises or may be involved in the adjudication and decision of the issue as to the right of possession asserted by the plaintiff.

In the course of the proceedings in the Court of First Instance plaintiff prayed for the appointment of a receiver for the lands in question pending the outcome of this litigation, and excepted to the ruling of the court denying such appointment. Appointments of receivers of real estate in cases of this kind lie largely in the sound discretion of the court, and where the effect of such an appointment is to take real estate out of the possession of the defendant before the final adjudication of the rights of the parties, the appointment should be made only in extreme cases and on a clear showing of necessity therefor in order to save the plaintiff from grave and irremediable loss or damage. (34 Cyc, 51, and cases there cited.) No such showing has been made in this case as would justify us in interfering with the exercise by the trial judge of his discretion in denying the application for a receiver.

The judgment entered in the court below sustaining the demurrer to the complaint should be reversed and the record returned for further proceeding in conformity with law.

No costs in this instance to either party. So ordered.

Torres, Trent, and Araullo, JJ., concur.

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