

REMEDIOS T. UICHANCO, ET AL., PLAINTIFFS AND APPELLEES, VS. SALVADOR LAURILLA, DEFENDANT AND APPELLANT.*G.R. No. 13935. June 30, 1960*

Ponente: MONTEMAYOR, J.

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Defendant Salvador Laurilla is appealing the decision of the Court of First Instance of Manila (Civil Case No. 27228), dated November 29, 1956, ordering him to pay to the plaintiffs back rentals in the amount of P868.00, the monthly rentals from March 1956 until he vacated the premises, plus 25% of the whole amount claimed by plaintiffs, as attorney's fees, with legal interest from the date of the filing of the complaint, and to pay the costs. The appeal was originally taken to the Court of Appeals, but the latter in its resolution of April 22, 1958, believing that it involved only question of jurisdiction, certified the appeal to us.

The facts in this case are as follows: Sometime in 1947, plaintiff Remedios T. Uichanco leased to defendant-appellant the premises located at 494 San Andres, Malate, Manila, at a monthly rental of P45.00, payable at the end of the month. However, since 1952, defendant had consistently failed to pay the full rentals, the amounts given monthly being less than P45.00, the last payment having been made on August 7, 1955; there was always a balance of his account in favor of the plaintiffs, and this continued until the unpaid rentals reached the amount of P868.00 as of February 29, 1956. Aside from the written demands (Exhibits B and C) made by plaintiffs thru counsel to the defendant to pay said back rentals and to vacate said premises, plaintiff Conrado B. Uichanco made various and continuous demands upon him to pay the rentals and to vacate the place in September, 1952. It was only after defendant had persistently refused to pay the said rentals and to vacate the leased premises that the present action was brought in the Court of First Instance of Manila on August 20, 1955.

In his appeal, defendant-appellant makes the following assignment of errors:

"ASSIGNMENT OF ERRORS**I**

The lower court erred in holding that it has jurisdiction over the subject-matter of the action or suit;

II

The lower court erred in holding that the case was filed beyond the period of one year;

III

The lower court erred in denying the motion to dismiss filed by appellant dated August 31, 1955;

IV

The lower court erred in denying the motion for reconsideration of the order denying the motion to dismiss and to discharge order of attachment."

The only question involved in the appeal is whether or not the Court of First Instance of Manila had jurisdiction over the case, defendant-appellant contending that said court had no jurisdiction, for the reason that the total amount of the back rentals sought to be collected was less than P2,000.00, and also because the action was brought within one year from his unlawful detainer of the property. He claims that the mere fact that the various sums paid by him each month was less than the stipulated monthly rental of P45.00, did not render his possession of the premises per se unlawful from that date up to the filing of the complaint on August 20, 1955, for the reason that although there was a demand upon him in November 1951 to pay back rentals and to vacate the premises, yet this demand can be considered abandoned when on June 9, 1953, he fully paid his obligations up to December, 1952, and thereafter, he had been paying amounts less than the stipulated monthly rental until August 7, 1955. In other words, according to him, his possession of the premises became illegal only after the last demand on him on July 8, 1955, so that when the present action was filed on August 20, 1955, only about a month had elapsed from the said last demand, and the case being one of illegal detainer, it should have been filed in the Municipal Court of Manila. On the other hand, plaintiffs-appellees maintain and correctly, that what really confers jurisdiction on the Justice of the Peace Court or the Municipal Court in illegal detainer cases is not the amount of unpaid rentals involved, but rather the nature of the action (*Lizo vs. Carangdan, et al.*, 73 Phil. 649). And it is a well settled rule that if rents or damages are claimed in the action for forcible entry or illegal detainer, the inferior court has jurisdiction irrespective of the amount of rents or damages claimed, because the rents or damages are only incidental to the main action. (*Lao Seng Hian vs. Almeda Lopez*, 83 Phil., 617; 46 Off. Gaz., [11th Supp.] 70; See also *De la Cruz vs. Udarbe Yulo*, 50 Off. Gaz., 1658, citing *Tuason vs. Sellner*, 30 Phil., 543; *Boga vs. Sajo*, 11 Phil., 409).

As to the period of illegal possession or detainer, plaintiffs also contend and with reason, that from the time defendant violated the terms of the lease contract in 1952 when he began paying monthly rentals less than the stipulated amount, he was in default and could be considered as illegally possessing and occupying the property because despite said default and the demands made on him to pay the rentals and to vacate the premises, he refused to vacate said premises, neither did he pay the rentals, so that from 1952 to 1955 when the suit was brought in court, about three years had passed; and the action brought was no longer illegal detainer but rather *accion publiciana* for the recovery of possession.

The fact that plaintiffs had accepted the partial monthly payments made by defendant, less than the stipulated monthly rental, may not be considered as a renewal of the lease contract. While a lessor may tolerate the continued default of his lessee, waiting and hoping that the latter would eventually pay up all his back rentals, said lessor could not very well refuse to accept the various amounts tendered just because they did not cover the full monthly rentals. That would have been unwise and unbusinesslike, for if he did that, he might get nothing at all from his delinquent and recalcitrant tenant. A wise and prudent lessor may content himself with receiving said various monthly payments, though less than the stipulated amount until fully convinced that his lessee is unwilling or in no position to pay the full amount, in which case, he finally decides to bring the action to recover possession of the premises, with the Municipal or Justice of the Peace Court, if the period from the time that the lessee first defaulted in payment and refused to vacate the premises up to the filing of the action, is within one year; otherwise, with the Court of First Instance.

In view of the foregoing, finding no error in the appealed decision, the same is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, and Gutierrez David, JJ., concur.
Concepcion and Barrera, JJ., concur in the result.

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