

JESUS S. DIZON, PLAINTIFF AND APPELLANT VS. JOSE T. GARCIA, SR., ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 14690. November 29, 1960*

Ponente: GUTIERREZ DAVID, J.

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On December 1, 1956, Jesus S. Dizon filed with the Court of First Instance of Pampanga an action for specific performance and damages against Jose T. Garcia, Marcelino Garcia, Alejandro P. Dizon and Victor Serrano, the defendant first named being sued in his personal capacity and the latter three as judicial administrators of the estates of the deceased spouses Juan Rivera and Vicenta Dizon. The complaint, under the first cause of action, alleges in substance that on January 28, 1953 the defendant Jose T. Garcia and the late Juan Rivera—the latter acting in his own name and as executor of the estate of his deceased wife Vicenta Dizon—leased to plaintiff certain parcels of agricultural land (5 of which were owned by them pro-indiviso) for a period of 5 years commencing from the crop year 1953-54 up to and including the agricultural year 1957-58 at an annual rent of P20,000.00 and 250 cavans of palay for the first year and P21,000.00 and 250 cavans of palay for each of the succeeding years, the lands leased having an aggregate area of more than 402 hectares as evidenced by the contract of lease attached to the complaint as Annex "A"; that pursuant to the real and true agreement of the parties to the lease contract, plaintiff on different dates from June 3, 1953 to July 2, 1956 paid to defendants various amounts totalling; P78,050.00, and delivered 757 cavans of palay; that on November 15, 1956, plaintiff deposited in court the sum of P4,950.00, the balance of the rents in cash corresponding to the fourth agricultural year, in connection with a complaint for interpleader plaintiff was constrained to file against the defendants; that as a consequence of the filing of the complaint for interpleader, the defendants Marcelino Garcia and Victor R. Serrano threatened to eject plaintiff from the leased premises "as in fact both defendants have started broadcasting in the poblacion of Mabalacat, Pampanga, that they will eject the plaintiff from the leased premises, notwithstanding the fact that the plaintiff has religiously and faithfully complied with all the obligations arising from the real and true agreement of the parties;" that when plaintiff went to see the said defendants, both informed him that "they have already agreed with others to lease the premises and to succeed the plaintiff;" and that the plaintiff under the lease contract, Annex "A", has an option to renew the lease for another five years and intends to exercise said option. The complaint, likewise, alleges, as a second cause of action, that some 25 hectares of the leased lands had not been delivered to plaintiff; and that notwithstanding repeated demands, defendants refused and still refuse to deliver to plaintiff the said 25 hectares. Finally, as a third cause of action, plaintiff avers that as a consequence of the facts above alleged, he suffered damages both moral and actual. Plaintiff, therefore, prays, under the first cause of action, that defendants be directed to execute a renewal of the lease contract for another 5 years and to deliver, under the second cause of action, 25 hectares of the leased premises, plus damages as claimed in the third cause of action.

Alleging that the lease contract had not yet expired so that the option to renew the same could not yet be exercised; that plaintiff stipulated to renew the lease only in the event that "the lessors shall decide to have the same property leased again"; and that the defendant judicial administrators cannot be compelled to enter into any

contract with plaintiff regarding the properties under custodia legis, unless the proper petition be made with the probate court that appointed them; counsel for the defendants (except Alejandro P. Dizon) filed a motion to dismiss plaintiff's first cause of action. The motion was opposed by plaintiff, but the lower court in its order of July 16, 1957 found the grounds alleged in the motion to dismiss not to be indubitable and consequently overruled the same, without prejudice to defendants setting up said grounds in their answer as special defenses. Submitting documentary exhibits, defendants asked for reconsideration. Upon order of the court, plaintiff filed his opposition to the motion for reconsideration setting forth therein his objection to the admission of the exhibits. To this opposition, defendants filed a reply under date of August 13, 1957 submitting therewith four additional exhibits. In an order dated December 5, 1957, the lower court— stating that "with the presentation of exhibits 17 and 18 attached to the defendants' pleading of August 13, 1957, the defendants' motion for reconsideration becomes now tenable for the reason that there is an allegation of the complaint (paragraph 4 thereof) with regard to the filing of an action for interpleader, which has already been dismissed"—reconsidered its order of July 16, 1957, but instead of dismissing the first cause of action of the complaint as sought by the defendants, it ordered plaintiff to amend the same within five days from notice. On December 12, 1957, plaintiff filed his motion for reconsideration, which was denied on January 7, 1958. As plaintiff failed or refused to amend the first cause of action of his complaint as ordered within the period granted, the lower court, upon motion of ifie defendants, issued its order of March 19, 1958, dismissing said cause of action. From that order, pl^||tiff appealed directly to this Court.

In his lone assignment of error, plaintiff contends that the lower court erred in issuing the order of dismissal on the basis of exhibits "17" and "18", or of facts not alleged in the complaint. The contention, it will be observed, is premised on the erroneous assumption that the order of dismissal complained of was issued on the ground of lack of cause of action. It is on record, however, that plaintiff's first cause of action was dismissed, not because of the ground pointed out in the assigned error, but because of the latter's failure or refusal to amend his complaint within the period granted him as ordered by the court. Such dismissal is authorized under section 3 of Rule 30 of the Rules of Court, which empowers the court, upon its own motion or that of the defendant, to dismiss the cause or action when plaintiff fails to. comply with its lawful orders.

In any event, considering the circumstances of the case, we think the dismissal was justified, it appearing, as pointed out by defendants in their motion to dismiss, that at the time of the filing of the complaint, plaintiff could not have properly asked for the renewal of the contract of lease for the reason that the original term of the lease had not yet expired. It also appears that the greater portion of the lands involved in the case are in custodia legis. Contrary to plaintiff's contention, the grounds alleged in defendants' motion to dismiss were obviously based upon the allegations of the complaint itself—which includes the lease Contract, Annex "A", by reference—and not upon facts entirely extraneous or foreign thereto.

In view of the foregoing, the order appealed from is hereby affirmed, with costs against plaintiff-appellant.

Paras, C.J. Bengzon, Bautista Angelo, Labrador, Reyes, J.B.L., Paredes, and Dizon, JJ., concur.

Order affirmed.

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