

**ELVIRA VIDAL TUASON DE RICKARDS, ASSISTED BY HER HUS-BAND,
JOSE RICKARDS, PLAINTIFFS AND APPELLANTS, VS. ANDRES F.
GONZALES, DEFENDANT AND APPELLEE.**

G. R. No. 14939. September 26, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Action filed by Elvira Vidal Tuason de Rickards, assisted by her husband Jose A. Rickards, in the Court of First Instance of Manila (C.C. No. 36203) against Andres F. Gonzales to have the latter vacate the lots in question and for collection of unpaid rentals.

The complaint dated May 8, 1958 alleged that prior to the year 1953, defendant's father Modesto Gonzales orally leased from plaintiffs, on a month-to-month basis, two lots in the City of Manila (denominated Lots Nos. 2 and 54-A of plaintiffs' private subdivision plan) at a monthly rental of P30 for Lot No. 2 and P8 for Lot No. 54-A, which rentals were increased effective January, 1955 to P35 and P10, respectively, on account of an increase in real estate taxes; that Modesto Gonzales had not paid rentals from December, 1953 to April, 1958, on Lot No. 2, and from August, 1954 to April, 1958, on Lot No. 54-A; that on March 16, 1957, the defendant Andres F. Gonzales, son of Modesto Gonzales, assumed to pay his father's unpaid rentals on the lots in question, paying on the same date on account of said rentals the sum of P50 as to Lot No. 2 and P15 as to Lot No. 54-A; that on March 18, 1958, defendant again paid the sum of P36 on account of the rentals due on Lot 2; that deducting the payments on account already made by defendant, there is a balance of unpaid rentals in arrears in the amount of P1,700 on Lot No. 2, and P425.00 on Lot No. 54-A, which rentals defendant had not paid in spite of repeated demands by plaintiff; and that at least fifteen (15) days prior to the filing of the complaint, plaintiffs had demanded defendant to vacate the lots in question and to pay all the rentals due thereon, which demand defendant also did not heed. Wherefore, plaintiffs prayed that defendant be ordered to vacate the lots in question and deliver their possession to plaintiffs; and that he likewise be ordered to pay P1,700 as unpaid rentals on Lot No. 2 and P425.00 on Lot No. 54-A, as well as the rentals that would fall due on the two lots from the time of the filing of the complaint until the premises are actually vacated, plus interests, P500 attorney's fees, and the costs of the suit.

As affirmative defenses to the complaint, defendant Andres F. Gonzales asserted, first, that he is not the proper party but the estate of his father Modesto Gonzales, who died in 1956; and second, that the lower court lacked jurisdiction, the case being one of detainer that allegedly took place "at least fifteen days prior to the filing of this complaint". After a hearing on these special defenses, and the filing of memoranda by both parties, the lower court ordered the dismissal of the complaint, holding as follows:

"Not because Andres Gonzales has assumed the payment of the rental and arrears of his father Modesto Gonzales, that the former should be considered as lessee of the properties in question. At least the relation between the plaintiff and Andres Gonzales is that only of a creditor against Andres Gonzales for the collection of sum of money. Modesto Gonzales, father of the defendant Andres Gonzales should be the proper defendant in this case for ejectment. With respect to Andres Gonzales he is not the proper party for ejectment as he is a

stranger to the relation of the contract between his father Modesto Gonzales and that of the plaintiff. Although one of the paragraphs of the complaint states that prior to the filing of the complaint, Andres Gonzales has been demanded to vacate the premises and pay the rental he has assumed for his father, it is clear that only Andres Gonzales began as illegal possessor of the property in question fifteen days prior to the filing of the complaint and consequently the action against Andres Gonzales should be filed before the Municipal Court of Manila and not before this Court.

In view of the foregoing considerations, this Court is of the opinion and so holds that this case should be dismissed for lack of merits with costs against the plaintiff." (Record on Appeal, pp. 41-42)."

Unable to obtain reconsideration of the above order of dismissal, plaintiffs appealed to this Court.

Two questions are presented by the appeal, namely: Whether or not the lower court has jurisdiction over the complaint; second, whether or not defendant-appellee Andres F. Gonzales is the proper party defendant in this case.

Anent the question of jurisdiction, we find that the lower court did not err in dismissing this case of unlawful detainer for lack of jurisdiction.

The settled rule is that it is the allegations of the complaint that determine the jurisdiction of the court to entertain the same (Rosario vs. Carandang, 96 Phil., 845; 51 Off. Gaz. [5] 2387; Fernandez vs. Gala-Sison, 86 Phil., 282; 50 Off. Gaz. [12] 5760; Arches vs. Prov. Fiscal of Capiz, 81 Phil.; 190i; 46 Off. Gaz. [1] 71). The allegations of plaintiff appellants' complaint (of which an abstract was given in the first part of this decision, clearly make out an action for unlawful detainer as this action is defined in sections 1 and 2 of Rule 72 of the Rules of Court. Being an action for unlawful detainer wherein the unlawful withholding of the leased premises allegedly took place within one year from the filing of the complaint, the present case falls within the exclusive jurisdiction of the inferior courts (sec. 88, in relation to section 44(b), Jud. Act).

But plaintiffs-appellants claim that the phrase "at least fifteen (15) days prior to the filing of this complaint" used by them in relation to the alleged demand to vacate the premises in question, without specifying an exact date when such demand was made, does not necessarily mean that the unlawful withholding of possession started only fifteen days before the complaint was filed, because other paragraphs of the complaint stated that demands had already been made upon defendant in the years 1953 and 1954. But the demands which the complaint alleged to have been made in 1953, 1954 and 1957 were mere demands to pay back rentals and not demands to vacate the premises (pars. IV, VII, XIV and XVII, Complaint, Rec. on App-pp. 3-4, 6). As repeatedly held by us, it is not the mere failure to pay rents upon demand, but it is the concomitant demand to vacate the premises, and the tenant's refusal or failure to vacate, which makes the withholding of possession unlawful (Canaynay vs. Sarmiento, 79 Phil., 36; Robles vs. Jose 99 Phil., 658; 52 Off. Gaz., 6193; Zobel vs. Abreu, 98 Phil., 343; 52 Off. Gaz., 3592. If as appellants alleged, they made demand upon defendant to vacate the premises in question only "at least fifteen (15) days prior to the filing of the complaint", it follows that their cause of action to eject the latter from the premises (assuming that they have such cause) accrued only at the time such demand was made. While the date of demand is not specified, the very admission of appellants (p. 24, their brief) that they had used the phrase "at least fifteen (15) days prior to the filing of this complaint" precisely to comply with the provisions of Rule 72 of the Rules of Court (which in its section 2 prohibits the bringing of an action for unlawful detainer "unless the tenant shall have failed to pay such rent or comply with such conditions for a period of fifteen days * * * after demand") is clear indication that the demand to vacate was made within a year from the filing of the complaint, and their action is, as it was intended to be, one for unlawful detainer under Rule 72 that, as already stated, is within the exclusive jurisdiction of the inferior courts. The lower court, therefore, correctly dismissed this detainer case for lack of jurisdiction.

Having thus reached the conclusion that the complaint for unlawful detainer was correctly dismissed for lack of jurisdiction, we find it unnecessary to decide whether, in said action, it is not defendant Andres F. Gonzales, but the estate of his deceased father Modesto Gonzales, that is the proper party defendant therein.

Appellants claim, however, that this action should not be dismissed in toto, because their complaint is a dual action for ejectment as well as, for the collection of rentals in arrears amounting to P2,125.00, and while defendant may not be the proper party in ejectment, he is the proper Party defendant in the action for the collection of unpaid rentals because he had, as alleged in the complaint, assumed payment of said rentals after the death of his father. In support of this supposed assumption of payment by defendant, appellants rely on his letter of March 13, 1957 (Annex "D" of their motion for reconsideration in the court below), stating:

"13 March 1957

Atty. Jorge V. Jazmines
442 Platerías
Quiapo, Manila

My dear Compañero:

This is to acknowledge with thanks the receipt of your letter dated March 2, 1957.

* * * * *

For the meantime, I propose to pay the amount of P50.00 a month as the only amount we can afford, the P35.00 of which shall be applied to the current rental and the amount of P15.00 to be applied as amortization to the arrears. In the case of the lot at Trabajo, let me propose to pay the amount of P15.00 a month, also beginning this month, of which P10.00 shall be for the current rental and the P5.00 to be applied to the back accounts, until it is fully paid up. As a gesture of faithful compliance thereto, I am enclosing a BA Check No. A 1020881 in the amount of P65.00 to cover payments as above stated. Kindly acknowledge receipt thereto. Trusting that the foregoing propositions shall meet the approval of your client as the only considerate and human solution to the settlement of an obligation left by my father and of which I am now taking over, I remain.

Very respectfully,

(Sgd.) Andres P. Gonzales

Andres Gonzales"

Granting that by the above letter, defendant had, as claimed by appellants, assumed the obligation of his deceased father's estate for the payment of rentals due on the premises in question, said assumption of payment is necessarily limited by the terms under which it was made. According to his letter, defendant agreed to pay appellants P65.00 a month, P45.00 thereof to be applied to the current rentals on the two lots in question (P31 for

Lot No. 2 and P10 for Lot No. 54-A), and the remaining P20 as monthly amortization on the unpaid rentals in arrears, P15 on Lot No. 2 and P5 on Lot No. 54-A). Having thus agreed that the rentals in arrears would not be paid in lump sum but in monthly amortizations of P15 for Lot No. 2 and P5 for Lot No. 54-A, appellants lost the right to demand payment of the full amount of rentals due from 1953 to the filing of the complaint. Hence, even on the assumption that defendant had failed to make any more payments after the initial check for P65 that he sent to appellants with his letter of March 13, 1957, appellants can only collect from him the sum of P65 a month starting from April, 1957. From April, 1957 to the filing of the complaint on May 8, 1958, there was due from defendant only the amount of P810.00, an amount that is not within the jurisdiction of the court a quo.

Upon the other hand, it is not sufficiently clear from defendant's letter of March 13, 1957 above-quoted that he assumed payment of his father's indebtedness to appellants as his own, personal obligation. Read together with his earlier letter of September 22, 1956 (made part of appellants' pleadings as Annex "B" of their motion for reconsideration, Rec. on Appeal, pp. 53-54), wherein defendant informed appellants' counsel that the estate of his deceased father was pending settlement and that he was acting as the administrator thereof, the assumption of payment embodied in his letter of March 13, 1957, can be taken to mean an assumption of obligation only in defendant's capacity as administrator of his father's estate. In this case, the lower court would not even have jurisdiction over the subject-matter of appellants' claim, for it should be prosecuted in the proceedings for the settlement of the estate of the deceased Modesto Gonzales.

In whatever way the complaint for collection of rentals, supported by appellants', exhibits [1] is viewed, still the lower court had no jurisdiction to take cognizance thereof.

Wherefore, the dismissal of the complaint for lack of jurisdiction is affirmed, with costs against appellants Elvira Vidal Tuason de Rickards and Jose A. Rickards.

Paras C.J. Bengzon, Padilla, Bautista Angelo, Labrador, Concepción, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Order affirmed.

[1] They may be considered for the purpose of supporting the negations of fact made in the complaint (Cañete vs. Wislizenus, 36 Phil., 428).

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