

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. ANTONIA EBAY, DEFENDANT AND APPELLEE.

G.R. No. 15872. April 26, 1961

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

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

Appeal from the decision of the Court of First Instance of Manila dated May 28, 1959, dismissing Civil Case No. 38430 for lack of jurisdiction.

It appears that on November 11, 1958, said civil case was filed by the City of Manila against Antonia Ebay, alleging, inter alia, that defendant, sometime in February, 1950, through strategy and stealth and without plaintiff's knowledge and consent, erected a house of second-class materials on a portion of a parcel of land belonging to plaintiff, and has since then been occupying said land; that the parcel of land in question is intended as children's playground but could not be developed because of defendant's presence thereon; that for said illegal occupation by defendant of part of its property, plaintiff has suffered damages in the amount of P164.34, corresponding to the period from April 10, 1950 to October 31, 1958, at the rate of P1.60 a month; that on November 3, 1958, plaintiff sent defendant a written notice to vacate the premises and to pay her arrears in rent; and that in spite of the lapse of a reasonable time from the demand, defendant has failed to vacate said premises and to pay rents thereon. Wherefore, plaintiff prayed for judgment commanding defendant to vacate the premises in question and to pay damages at the rate of P1.60 a month until she vacates the premises, plus interests, and for other relief.

On November 29, 1958, defendant answered the complaint, admitting having constructed a house on the premises in question without previous permission from plaintiff, but claiming that the latter, with knowledge of her entry into the premises, tolerated her possession and has collected rentals from her; and, as a special defense, defendant claimed that the court has no jurisdiction over the subject-matter of this case, the same being for unlawful detainer which is exclusively cognizable by the municipal court of Manila.

Upon these basic issues, the case was heard; and after trial, the court a quo, the Honorable Carmelino G. Alvendia presiding, rendered judgment dismissing the complaint for lack of jurisdiction. Whereupon, plaintiff City of Manila appealed directly to this Court.

After an examination of all the pleadings and evidence in this case, we are constrained to agree with the court below that this is an action for ejectment over which it has no jurisdiction.

In the first place, at the trial of the case, plaintiff presented the testimony of Arnulfo Mataro, employee of the City Treasurer's Office, who declared that the City accepted from defendant payment of rentals for the months of February 10, 1950 to April 9, 1950, at the rate of P1.60 a month, or a total of P3.20, on March 20, 1956, two years before the filing of this case; and then, again, that defendant paid to the City Treasurer's Office the amount of P4.80 covering rentals for the period from April 10, 1950 to July 9, 1950 on March 17, 1957, that is, more than one year before the filing of the complaint (t.s.n., pp. 3-4). Acceptance by the plaintiff of these rentals from

defendant converted the latter's possession from illegal to legal, creating a landlord-tenant relationship between them. In the second place, although plaintiff-appellant's complaint alleges that defendant entered and occupied the premises in question without its previous permission and consent; i.e., illegally, way back in February, 1950, or eight years previous to the filing of the complaint herein, it is also averred in the same complaint that defendant has failed to pay the rentals due on said premises from April 10, 1950 to October 31, 1958 inspite of a written demand from plaintiff, again showing a landlord-tenant relation.

Considering, then, that defendant was in the possession of the premises in question as tenant when plaintiff sent her the notice to vacate and to pay damages dated November 3, 1958, otherwise, "this Office will be constrained to refer the matter to the City Fiscal for proper legal action against you for ejectment and collection of damages due without further notice" (Exh. B, Plaintiff), and that this action was brought Vvithin fifteen days from the sending of such notice, it is quite obvious that the present case is one for ejectment under section 2, Rule 72, of the Rules of Court, over which the municipal court has exclusive jurisdiction.

For the first time in this appeal, plaintiff calls attention to the fact that defendant constructed her house on the premises in question without the necessary building permit in violation of section 85, Revised Ordinances of the City of Manila, implying that for her failure to get said permit, she should not be allowed to stay in the premises. Suffice it to say in this regard, however, that as this theory was not raised or adopted by plaintiff in its complaint or at any time during the trial in the court below, it can not be adopted for the first time on appeal (*S.V.S. Pictures, Inc. vs. C.A.*, 106 Phil., 897; *Cui vs. Cui*, 100 Phil., 913; 53 Off. Gaz., No. 11, 3429; *Atkins, Kroll & Co. vs. Cua Hian Tek*, 102 Phil., 948). Besides, defendant can hardly be held accountable for the lack of coordination between the offices of the City Treasurer and the City Engineer of plaintiff-appellant, in that the office of the City Treasurer accepted payment of rentals from defendant without first inquiring whether or not she built her house on the property in question with the necessary building permit from the Office of the City Engineer.

Wherefore, the judgment appealed from is affirmed, with costs against plaintiff-appellant City of Manila.

Bengzon, Acting C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, and Dizon, JJ., concur.

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