

ALIPIO N. CASILAN AND PURITA GANGCAYCO, PLAINTIFFS AND APPELLANTS, VS. RAYMUND TOMASSI, SANTIAGO GANCAYCO AND MANUEL GANGCAYCO, DEFENDANTS AND APPELLEES.*G.R. No. 16574. February 28, 1964*

Ponente: MAKALINTAL, J.

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This case originated in the Justice of the Peace Court of Guiuan, Samar. A complaint was filed there by the present appellants on April 12, 1950, alleging that the defendants, appellees here, were unlawfully detaining two (2) qounset huts owned by appellants and leased by them to appellees under a verbal contract entered into on November 1, 1949. It was further alleged that the rental agreed upon was P400.00 a month, but that appellees had failed to pay the same from the time the lease agreement started, notwithstanding repeated demands for such payment.

A motion to dismiss was filed by appellees on the ground that the complaint did not allege facts sufficient to constitute a cause of action. The motion was denied by the Justice of the Peace Court. The hearing of the case was postponed several times upon motion of appellees. The last motion for postponement, however, was denied upon appellants' objection, and the trial proceeded in the absence of the adverse parties, after which, judgment was rendered, ordering them to vacate the premises described in the complaint and to pay the sum of P500.00 as rentals from November 1, 1949 to March 31, 1950.

The case was appealed to the Court of First Instance of Samar, where appellees filed their answer to the complaint. In the answer of Santiago Gangcayco he alleged as special defense that the quonset huts in question had been sold to Raymond Tomassi. In his separate answer Tomassi raised, among his special defenses, the question of jurisdiction on the part of the Justice of the Peace Court.

On December 27, 1950 the Court of First Instance of Samar issued an order dismissing the case on the ground that the Justice of the Peace Court had lost its jurisdiction by reason of the several postponements granted by it and therefore the Court of First Instance did not acquire appellate jurisdiction at all. An appeal from that order was taken to us (G. R. No. 9320), and this Court rendered judgment on January 31, 1956, stating that the case should have been tried on the merits by the Court of First Instance and remanding the record for that purpose.

On May 15, 1956 the Court of First Instance again issued an order dismissing the appeal of appellees and remanding the case in turn to the Justice of the Peace Court for execution of its judgment. From that order appellees elevated the matter to this Court by certiorari (G. R. No. L-11335 and G. R. No. L-11450); and on October 30, 1958, we rendered judgment ordering the Court of First Instance to proceed with the trial on the merits. On June 23, 1959, the Court of First Instance, after conducting the trial as ordered, rendered its decision again dismissing the complaint, this time on the ground that the Justice of the Peace Court did not acquire original jurisdiction in view of the absence of any allegation in the complaint that the plaintiffs, appellants here, had made demand upon the defendants to vacate the two huts in question. Appellants filed a motion for reconsideration, and

upon denial thereof, perfected the present appeal. Their prayer is that the dismissal be set aside and the court ordered to render judgment in accordance with the oral and documentary evidence adduced during the trial.

The issue here, is whether or not original jurisdiction was acquired by the Justice of the Peace Court, considering the allegations in the complaint. If it did acquire such jurisdiction, then the Court of First Instance, acting as appellate court, should consider the evidence presented. On the other hand, if the Justice of the Peace Court did not acquire jurisdiction, the only recourse for the Court of First Instance was to issue the order of dismissal, as it did.

We have gone over the allegations of the complaint and found nothing there to the effect that a demand had been made upon the defendants to vacate the premises in question. What allegation there was refers to a demand for payment of the rentals agreed upon. Such allegation, according to the consistent ruling of this Court, is insufficient to confer jurisdiction upon the Justice of the Peace Court. in an action of unlawful detainer. Thus in *Canaynay vs. Sarmiento*, 79 Phil. p. 36, it was held:

"The fact that it is alleged in the complaint that defendants failed to pay the rents since after August 25, 1923, does not make unlawful defendant's withholding of possession of the property. Mere failure to pay rents does not ipso facto make unlawful tenant's possession of the premises. It is the owner's demand for tenant to vacate the premises, when the tenant has failed to pay the rents on time, and tenant's refusal or failure to vacate, which make unlawful withholding of possession. There is no legal obstacle for the owner to allow a defaulting tenant to remain in the rented property one month, one year, several years, or even decades. That consent, no matter how long it may last, makes lawful tenant's possession. Only when that consent is withdrawn and the owner demands tenant to leave the property is the owner's right of possession asserted and the tenant's refusal or failure to move out makes his possession unlawful, because it is violative of the owner's preferential right of possession." (See also *Robles vs. San Jose*, 99 Phil., 658; 52 Off. Gaz., 6193; *Rickards vs. Gonzales*, 109 Phil., 423).

WHEREFORE, the judgment appealed from is affirmed, with costs,

Padilla, Bautista Angelo, Labrador, Concepción, Reyes, J. B.L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

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