

MARIA DY AND DANIEL TUAL, PETITIONERS, VS. BAUTISTA KUIZON, RESPONDENT

G.R. No. 16654. November 30, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On May 2, 1951, Bautista Kuizon filed a complaint of forcible entry and detainer before the Justice of the Peace Court of Tangub, Misamis Occidental, alleging that on June 8, 1950 defendants Maria Dy and Daniel Tual by means of force, strategy and intimidation wrested from him the possession of certain lots which had been converted by him into a fishpond and that in the course of their illegal entry said defendants cut the barbed wire fence enclosing portions of said lots, demolished a camarin and a shed house standing thereon, and destroyed the dikes of the fishpond causing the bangus fry contained therein to escape, and that since then defendants have wrongfully withheld the possession of the lots. Plaintiff, however, reserved his right to recover damages arising out of the destruction of the camarin

and the dikes in a separate action.

On May 16, 1951, defendants filed their answer alleging that the camarin and shed house mentioned in plaintiff's complaint as well as Lot No. 275 were the properties of defendant Maria Dy. After trial, the justice of the peace court dismissed the complaint holding that it has no jurisdiction to act thereon in view of the claim of ownership set up by defendant Maria Dy.

Plaintiff appealed the case to the court of first instance. Defendants filed their answer. The case was called for trial during which the parties introduced evidence. Thereafter, the court rendered decision ordering defendants to pay, jointly and severally, to plaintiff damages in the amount of P6,000.00 "as reimbursement to the plaintiff for the construction of the fishpond in question including the cost of the house, dikes and other improvements in connection with the construction of the fishpond", and P2,000.00 for bangus fry which went out of the premises because of the destruction of the dikes, plus P1,000.00 attorney's fees, and the cost of suit.

Defendants took the case to the Court of Appeals, and after the parties had submitted their briefs, said court modified the decision appealed from as follows; defendants were ordered to vacate the area in question and to surrender its possession to plaintiff, and to pay, jointly and severally, to plaintiff the sum of P2,000.00 with legal interest thereon from the date of the filing of the complaint, plus P500.00 attorney's fees, with costs in both instances. Hence the present petition for review.

We find that the Court of Appeals erred in ordering petitioners to vacate the premises in question and to surrender their possession to respondent considering that such relief was not granted in the decision of the court of first instance and respondent did not appeal from such decision. It is a well-settled rule in this jurisdiction that whenever an appeal is taken in a civil case an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below. An appellee, who is not appellant, may assign errors in his brief where his purpose is to maintain the judgment on other

grounds, but he may not do so if his purpose is to have the judgment modified or reversed, for, in such case, he must appeal.[1] Here, respondent did not appeal and so it was error for the Court of Appeals to award to him a relief not granted by the lower court.

We find, however, that the Court of Appeals committed no error in ordering petitioners to pay respondent the sum of P2,000.00, with legal interest thereon, representing the value of the bangus fry which went out off the premises as a result of the destruction made by petitioners of the fishpond dikes in question. These bangus fry may well represent the fruits of the property the possession of which respondent was deprived by its forcible occupation on the part of petitioners which he is entitled to recover in action for forcible entry and detainer. And this is in line with a long line of decisions rendered by this Court interpreting the nature of the damages that may be recovered in an action of this nature. Thus, summarizing the rule on the matter, former Chief Justice Moran says:

" * * * since the only issue in actions for forcible entry and detainer is physical possession, the damages which plaintiff is entitled to are such as he may have sustained as a mere possessor. Material possession involves only the enjoyment of the thing possessed, and its use and the collection of its fruits, and these are the only benefits which the possessor is deprived of in losing his possession. In other words, plaintiff is entitled only to those damages which are caused by his loss of the use and occupation of the property, and not to such damages as are caused to the land or building during the unlawful possession, which he may recover only if he were the owner of the property, and he cannot be declared as such in an action for forcible entry and detainer. Damages to property may be recovered only by the owner in an ordinary action." (2 Moran, Comments on the Rules of Court, 1957 ed., p. 301; Italics supplied)

Moreover, it appears that this case was dismissed by the justice of the peace court on the ground that it had no jurisdiction to act thereon for the reason that defendant Maria Dy claim ownership over the camarin and shed house as well as Lot No. 275 which are involved in the instant action, but that when the case was appealed to the court of first instance the parties went into trial apparently submitting the case to its original jurisdiction as though converting the case into one for revindication. The question raised relative to the nature of the damage awarded to respondent would therefore be immaterial.

Having reached the foregoing conclusion, we find no merit in the claim that the Court of Appeals erred in awarding respondent the amount of P500.00 as attorney's fees.

Wherefore, the decision appealed from is modified by ordering petitioners to pay respondent the sum of P2,000.00 damages, with legal interest from the date of the filing of the complaint, plus P500.00 attorney's fees, without costs.

Bengzon, C. J., Padilla, Concepcion, Barrera, Paredes, Dizon and De Leon, JJ., concur.

Reyes, J. B. L. J., concurs in the result.

[1] Bunge Corporation and Universal Commercial Agencies vs. Elena Camenforte & Co., 91 Phil., 861; 48 Off. Gaz., (8) 3377; See also Pineda & Ampil Manufacturing Co. vs. Ampil, 95 Phil., 930; Cano, et al. vs. Cabangon, et al., 106 Phil.. 718.

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