

**CONSUELO T. DE CASAS, PLAINTIFF AND APPELLEE, VS. TERESITA F. PEYER, DEFENDANT AND APPELLANT***G.R. No. 18564. August 31, 1962*

Ponente: LABRADOR, J.

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Appeal from a judgment of the Court of First Instance of Manila ordering the defendant Teresita F. Peyer to vacate the premises known as Lot No. 4-C-ID-3-M of the subdivision plan Psd-21891, with an area of 3,716.1 square meters, situated at 150 V. Mapa, Sta. Mesa, Manila, to deliver possession thereof to plaintiff, and to pay to plaintiff the sum of P2,082.20 as rents for the year 1956, plus the rentals which may accrue from January 1, 1957, at the same rate of P2,082.20 per annum, up to the date the premises are delivered to plaintiff, plus costs. The Court of Appeals, to which the case was appealed, forwarded the case to this Court on the ground that the errors assigned by defendant-appellant raised only questions of law.

The present case was commenced in the municipal Court of Manila on November 21, 1956, when plaintiff filed an action for unlawful detainer against defendant for the latter's failure to pay the annual rent, payable in advance, for the year 1956 in the sum of P1,475.83 plus real estate tax of P606.37 for that year, which amounts defendant agreed to pay in accordance with a contract of lease (Annex "A" to the complaint), entered into between plaintiff and defendant in February, 1951.

After hearing the municipal court on December 28, 1956, rendered judgment whereby defendant and all persons claiming under her were ordered to vacate the premises described in the complaint, and defendant made to pay plaintiff the total amount of P2,082.20 representing rentals in arrears, the real estate tax for the year 1956, plus the sum of P122.99 a month beginning January, 1957, until she actually vacates and surrenders the possession of the lot to the plaintiff, etc. From that judgment defendant appealed to the Court of First Instance.

In her answer in the Court of First Instance defendant denied having entered into a contract with plaintiff in February, 1951, alleging that she had been occupying the premises in question for about 30 years, by virtue of a contract other than that alleged in the complaint, and that her failure to pay the rental for the year 1956 was due to plaintiff's refusal to accept the sum of P700.00 which she had always paid as yearly rental. By way of affirmative defenses, defendant alleged that the action was not an ejectment suit as contemplated in Rule 72 of the Rules of Court; that defendant owns a house on the premises worth P25,000 more or less; that defendant is ready and willing to pay P700.00 yearly rental which she has always paid since she first occupied the premises 30 years prior to the filing of the action; and that the increased annual rental for the land claimed by plaintiff, P1,475.83 plus real estate tax of P606.37, is unjustified. As a counterclaim, defendant alleged that the complaint is unwarranted and unjustified and plaintiff, knowing this to be a fact, by her complaint compelled the defendant to litigate, and prayed that defendant be awarded P500 to be paid by plaintiff as attorney's fees. In answer to defendant's counterclaim, plaintiff averred that in a prior valid and final judgment in Civil Case No. 18346 of the Court of First Instance of Manila, between her and defendant over the same subject matter, the validity of Annex "A" to the present complaint (contract of lease dated February, 1951) had been declared as binding upon the

parties.

Issues having been joined, the case was scheduled for hearing on March 19, 1957. Prior to said date, plaintiff filed a motion for immediate execution of the judgment, alleging that defendant failed to pay to plaintiff or deposit with the court the amount of rents due from January, 1957 to the date of the filing of the motion, and that defendant has not filed a supersedeas bond to answer for the back rentals amounting to P2,082.20. After hearing counsel for both parties, the court on March 18, 1957 granted the motion for immediate execution of the judgment rendered by the municipal court, and pursuant to said order, issued on April 4, 1957, a writ of execution ordering defendant to pay the different sums stated therein in addition to vacating the premises subject matter of the action.

On April 15, 1957, defendant deposited with the clerk of court the sum of P1,500 and asked for the suspension of the writ of execution. On June 1, 1957, the sheriff submitted his return as proof of service of execution on defendant and her consistent refusal to vacate the premises. On June 10, 1957, plaintiff filed a motion for the issuance of a writ of demolition and to withdraw deposit of payment in order that the same may be applied to the partial satisfaction of judgment in the case. The court gave defendant up to June 22, 1957, within which to show cause why the building constructed by her on the premises in question should not be demolished. On June 20, 1957, counsel for defendant, without complying with the order to show cause, filed a motion to postpone hearing of the motion for the issuance of a writ of demolition to June 29, and also a motion to suspend proceedings on the ground that the case was subject to the provisions of R. A. No. 1162, as amended by R. A. No. 1599. On July 10, 1957, the court issued an order granting the motion for the issuance of a writ of demolition and to withdraw deposit, and on July 24, issued the writ of demolition.

The case originally scheduled for hearing on March 18, 1957 was, due to numerous postponements at the instance of either party, tried only on November 19, 1957, on which date plaintiff presented and closed her evidence. Continuation of the hearing was set for December 3, 1957 for the presentation of evidence by the defendant, but on said date the latter did not appear. The hearing of the case was postponed to January 16, 1958, and again to March 13, 1958. Two days before this date, attorney for defendant filed a motion for postponement alleging illness of the defendant, but this motion was denied in open court on March 13, 1958. A motion to reconsider the order of denial was also denied, and on May 29, 1958, the court rendered the judgment set forth in the beginning of this opinion. A motion to set aside said judgment and for new trial having been denied, defendant appealed to the Court of Appeals which, as stated above, forwarded the case to us.

In this appeal appellant alleges that in refusing to grant her motion for postponement the lower court committed an abuse of discretion for it thereby deprived her of her right to present her evidence.

In the case of *McEntee vs. Manotok*, 113 Phil, 249, October 27, 1961, we held that in considering motions for postponement of trials, as well as in those for new trial, two circumstances should be taken into account by the court, namely (1) the merits of the case of the movant and (2) the reasonableness of the postponement. There may be an accident, surprise or excusable neglect justifying postponement or reconsideration (which apparently exists in the case at bar by reason of defendant's illness), but if movant does not present a meritorious claim or defense, denial of his motion for postponement may not be considered as an abuse of the discretion of the Court. Defendant-appellant herein does not seem to have any apparent valid defense to offer in her favor. The only defense she presents in her brief is her willingness to pay a reasonable rental, but not the increased rent claimed by plaintiff-appellee, which the former believes to be unreasonable and unjustified. It is noteworthy that the validity of Annex "A", the contract of lease between plaintiff and defendant of February, 1951, wherein the rental to be paid by the latter was fixed, and which was attached to the complaint filed in the municipal court, was previously passed upon as valid and binding between the parties in Civil Case No. 18346 of the Court of First Instance of Manila. As defendant-appellant does not seem to have any valid defense, her request for postponement

appears to be but a delaying tactic. (*Vaswani vs. Tarachand*, 110 Phil., 521, December 29, 1960). The lower court must have taken this circumstance into account, together with the fact that it had<sup>4</sup> already granted numerous postponements in the past, when it denied defendant-appellant's motion for postponement. The lower court may not, therefore, be held to have acted in an arbitrary or capricious manner when it denied the motion to postpone and rendered judgment on the evidence presented by the plaintiff-appellee, (*Hap Hong Hardware Co. vs. Phil. Milling Co.*, 111 Phil., 1096).

Another error attributed to the lower court is its having denied defendant-appellant's motion to suspend the proceedings pursuant to the provisions of Republic Act No. 1162, as amended by Republic Act No. 1599. Republic Act No. 1599 refers to the expropriation of landed estates or haciendas and the sale thereof to its tenants and occupants, and the suspension for a period of two years of ejectment proceedings against any tenant thereof. Defendant-appellant did not at all prove that the land in question is an hacienda or part of an hacienda covered by said Republic Act. It is but 3,716.1 square meters in area; it can hardly be considered a landed estate. Hence, the second error she imputes to the lower court does not merit any consideration.

For the foregoing, the judgment of the Court of First Instance of Manila is hereby affirmed, with costs against defendant-appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, J.J., concur.

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