

TE ATTA UY VDA. DE CAJUCOM, PETITIONER, VS. MANILA REMNANT CO., INC., AND THE HON. COURT OF APPEALS, RESPONDENTS.*G.R. No. 19376. August 31, 1966*

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

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Before us is a petition to review and reverse the decision of the Court of Appeals, in its Case CA-GR No. 28241-R, that affirmed the judgment of the Court of First Instance of Manila, requiring petitioner herein, Te Atta Vda. de Calderon, to vacate certain premises in Nueva Street, Manila, and remove her improvements thereon within three months from notice of the decision, restoring possession to the Manila Remnant Co., Inc., plus costs.

The facts, as found by the Court of Appeals, are not in dispute. Petitioner-appellant Te Atta was the lessee of a parcel of land in Binondo, Manila, covered by Transfer Certificate of Title No. 15515, upon which she had erected a building designated as Nos. 471-75, Nueva Street. The lease had not been recorded. Upon purchasing the lot from its former owners, the Grey family, in April, 1957, the respondent-appellee Manila Remnant Co., Inc., demanded of the lessee that she vacate the land within 90 days from notice, but she objected. Negotiations ultimately resulted in a written agreement, on October, 1957, substantially stipulating as follows:

"WHEREAS, the LESSOR is the absolute owner of the land located at 461-74 Nueva Street, Manila, more particularly described under Transfer Certificate of Title No. 15515, of the Registry of Deeds of Manila, and the LESSEE is the absolute owner of a house of strong materials on the said land.

WHEREAS, the parties have mutually agreed as they hereby agree to authorize A. U. Valencia & Co., authority to sell the property hereinabove described for the amount to Three Hundred Seventy Thousand Pesos (P370,000.00), to be apportioned as follows: P310,000.00 to be paid to the LESSOR and P60,000.00 clean to be paid on the LESSEE, representing the value of the land and improvements respectively, provided however, in the event that the property may be sold at a higher price, the proportionate ratio six to one on the over price will be divided between the parties.

WHEREAS, the parties have mutually agreed as they hereby agree that until and after property mentioned above shall have been actually sold and the price thereof paid, the LESSEE shall pay the LESSOR by way of rentals the sum of P1,750.00 a month; and

WHEREAS, the LESSEE tenders and the LESSOR accepts the full payment of P10,000.00, P9,000.00 in cash and P1,000.00 promissory note payable from the proceeds of the purchase price of the building, representing the rental in arrears, including the month of October, 1957."

About three months afterward, broker Valencia wrote resigning the commission given him to sell the tenement due to allegedly unreasonable price fixed for the improvements. One month later, on February 24, 1958, the landowner (respondent-appellee) notified the lessee and required her to vacate the property and remove the improvements within 60 days. Appellant answered that the demand was premature, and violated their contract. As a result, respondent-appellee filed action for illegal detainer in the Municipal Court of Manila, but that court

sustained the lessee and dismissed the action. On appeal to the Court of First Instance, the decision was reversed, the lessee ordered to restore possession, as heretofore noted. That judgment was affirmed by the Court of Appeals.

In this Supreme Court, appellant insists that the 1957 contract gave her the right to remain in possession at a monthly rental of P1,750.00 until the property was sold, and that the sale was a condition precedent for the recovery of possession by the lessor.

We find this appeal untenable. Construing the agreement in its entirety, it is apparent that the stipulation therein (third "whereas") -

"that until and after (the) property mentioned above shall have been actually sold and the price thereof paid, the LESSEE shall pay the LESSOR by way of rentals the sum of P1,750.00 a month"

could only refer to the power to sell given to A. U. Valencia & Co. in the paragraph immediately preceding. Assuming that the quoted clause entitled the appellant to remain in possession, it did so only with an ad interim character until the agent appointed was able to make the sale, for the price stated, or it became clear that the property could not be sold. Since Valencia resigned his commission and manifested his inability to sell the property on the terms specified, the 1957 contract became thereafter *functus officio* and its binding force terminated, its objective having become impossible of attainment for all intents and purposes. To make another sale would require a new agreement and a new price. But none was ever agreed upon or contemplated.

The consequence of the purported sale becoming impossible is that the situation of the parties reverted to what it was before the 1957 agreement: that is to say, that the respondent corporation became entitled to terminate the lease of petitioner Te Atta Uy Vda. de Calderon, since her lease was without a definite period, and hence, was on a month to month basis because the rental was monthly (Art. 1687, Civil Code). While that article also empowers the court to fix a longer term if the lessee, on a monthly basis, has been in occupation for more than a year, the Court of First Instance already had exercised that power when it gave the herein petitioner-appellant, as lessee, three months to vacate (Decision, Rec. App., p. 52). That period has already elapsed with considerable excess, and there is no warrant for extending it further.

The decision of the Court of Appeals is, therefore, affirmed. Petitioner to pay the costs in all instances.

Concepcion, C.J., Barrera, Dizon, Makalintal, Bengzon, JP, Zaldivar, and Sanchez, JJ., concur.

Regala, J., on leave, no part.

Ruiz Castro, J., no part.

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