SEE KIONG PHA, PLAINTIFF AND APPELLEE, VS. TI BUN LAY, DEFENDANT AND APPELLANT.

G.R. No. 21051. February 07, 1924

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an action of forcible entry and detainer. It was commenced in the court of the justice of the peace of the City of Manila on the 20th day of August, 1919. Its purpose was to recover the possession of a piece of property, including the lot and the building thereon, known as Nos. 225-231 Calle Santo Cristo, of the City of Manila, together with the sum of P250 as the rent for the month of August, 1919. The justice of the peace decided that the plaintiff was entitled to the possession of the property in question and rendered a judgment to that effect together with a judgment for the sum of P250 for the said month of August. From that judgment the defendant appealed to the Court of First Instance.

In the Court of First Instance the plaintiff renewed his complaint demanding the return of the possession of the property, together with damages at the rate of P50 per month, commencing with the month of September, 1919, until the property was returned to him. In said amended complaint no demand is made for the rent for the month of August, 1919, for which rent was demanded in the complaint presented in the court of the justice of the peace. To said complaint in the Court of First Instance the defendant answered, denying each and all of the allegations of the complaint, and for a special defense alleged:

"That since several years ago the; defendant has been occupying, as tenant, the premises known as Nos. 225 to 231 on Santo Cristo street at a monthly rent of P240, under a contract entered into with the owners thereof, who at present are the minors Sy Kiang Chian and Florencia Sy Lioc Suy, represented by their mother Dy Sioc Jian.

"That the defendant has not made any contract of lease with the plaintiff, or any other contract with regard to said premises.

"That the defendant was notified by the said Dy Sioc Jian that her minor children are still the owners of the aforesaid premises and that the rent thereof must be paid only to her in her capacity as administratrix.

"That the defendant has always been, and is, ready to pay the rents of said premises, as he has always done up to September 30, 1919, to the person who really has the right to receive said rents.

"That the defendant believes that the aforesaid minors represented by Dy Sioc Jfan are necessary parties to this action in order that it may be decided whether they are the owners entitled to receive the rents of the premises in question, or the plaintiff.

"Wherefore the defendant prays the court: That an order be entered directing that said minors represented by Dy Sioc Jian be summoned and ordered to appear in this case and a judgment be rendered, determining who has the right to receive the rents of said premises, dismissing the com- plaint as to defendant Ti Bun Lay, with the costs against the plaintiff, and granting the defendant any other just and equitable remedy."

After the beginning of the trial upon the issue presented by the complaint and the answer, the Honorable Pedro Concepcion, judge, discovered that some question existed in another case (No. 17819) concerning the ownership of the property in question, and ordered the suspension of the present case until the question of the ownership of the property in question was decided. The parties in the action (No, 17819) involving the ownership of the property in question were Dy Sioc Jian, See Kiong Chuan, and Florencia Sy Lioc Suy, as plaintiffs, against Sy Lioc Suy, See Kiong Pha, See Kiong Ling, See Kiong Chuan, and See Kiong Thi, defendants. In that action (No. 17819) the Honorable Pedro Concepcion, judge, on the 24th day of March, 1921, after trial rendered a decision declaring that the defendants See Kiong Pha, See Kiong Ling, See Kiong Chuan, and See Kiong Thi were the sole and only owners of the property in question. (Exhibit H.) The plaintiffs appealed from that decision to the Supreme Court, where in a carefully prepared decision by Justice Ignacio Villamor, the judgment appealed from was affirmed.[1] (Exhibit I.) The cause was then returned to the Court of First Instance.

It will be noted that one of the defendants in cause No. 17819, involving the question of the ownership of the property in question, is the plaintiff herein, See Kiong Pha.

After the final decision by the Supreme Court of cause No. 17819 and the same was returned to the Court of First Instance, the defendant in the present case presented a motion on the 28th day of March, 1923, praying for the dismissal of the present case upon the ground that it appeared that the plaintiff was not the sole owner of the property in question and had not been duly authorized by his coowners to maintain the present action. That motion apparently was never passed upon by the lower court. The cause proceeded to trial, at the close of which the Honorable Pedro Concepcion, judge, rendered a judgment in favor of the plaintiff and against the defendant for the sum of P19,066.54 as damages for the use and occupation of the property at the rate of P250 per month for the month of August, 1919, and for the following months commencing with September, 1919, to the 19th day of October, 1922, at the rate of P500 per month. The court further ordered that the sum of P9,653.23 which had been deposited with the clerk during the pendency of the action be delivered to the plaintiff. From that judgment the defendant appealed.

The appellant now alleges that neither the court of the justice of the peace nor the Court of First Instance had jurisdiction over the subject-matter in litigation; that the justice of the peace did not have jurisdiction because a question of ownership was involved, and therefore the Court of First Instance had no jurisdiction on appeal, and supports that contention by Exhibits H and I above referred to. Said exhibits clearly show that there was a real question of ownership concerning the property in question. He further contends that the plaintiff was not the proper party to maintain the action, by citing his answer filed in the present cause, which is quoted above and which is found at page 22 of the expediente. He further contends that the question was again called to the attention of the lower court on the 28th day of March, 1923, when he presented a motion to dismiss the present case because the plaintiff was not the proper party to maintain the action, after the decision of the Supreme Court in cause No. 17819 of the Court of First Instance, which motion, as far as the record shows, was never passed upon. From an examination of the record, with special reference to the decision of the Supreme Court in cause No 17819, the fact is established beyond question that there was a question concerning the ownership of the property pending, and that the plaintiff herein, See Kiong Pha, was not the owner of the property in question, but was only a coowner with three others, and that he had no authority to maintain the present action.

For all of the foregoing, we are of the opinion, and so decide, that the judgment appealed from should be, and is hereby, revoked; and it is hereby ordered and decreed that the record be returned to the court of its origin, without prejudice to the institution of such new proceedings as the parties interested may deem wise, and that if no proper proceedings are instituted there within the period of five days from the notice hereof, that the money heretofore deposited by the defendant with the clerk of the Court of First Instance be returned to him. And without any

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finding as to costs, it is so ordered.

Araullo, C. J., Street, Malcolm, Avancena, Ostrand, Johns, and Romualdez, JJ., concur.

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[1] 43 Phil., 562.

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