AUGUSTO J. D. CORTES, PLAINTIFF AND APPELLEE, VS. LORENZO RAMOS, DEFENDANT AND APPELLANT.

G.R. No. 21556. September 20, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This action is for the recovery of the possession of a fishery and the sum of P10,800 as damages.

The fishery in question is a part of the Hacienda de Marilao, formerly owned by the Real Monasterio de Santa Clara, and now by the plaintiff Augusto J. D. Cortes'according to the certificate of title Exhibit A.

The defendant was in possession of the fishery in question in 1918 pursuant to a contract of lease Exhibit B entered into with the Real Monasterio de Santa Clara. The term of this contract was one year from the month of December, 1918, up to December 31, 1919, without any right to a tacit renewal.

The plaintiff made demand on the defendant for the return of the fishery upon the termination of the contract of lease above-mentioned; and the defendant not having surrendered the property, nor paid the new rate of rent charged by the plaintiff, the latter filed his complaint on January 19, 1923.

The Court of First Instance of Bulacan, in a decision rendered April 1, 1923, sentenced the defendant to surrender to the plaintiff, Augusto J. D. Cortes, the possession of the fishery described in the complaint, to pay the plaintiff the sum of P10,800, Philippine currency, as rents due up to the time of filing the complaint, January 19, 1923, with legal interest thereon, also to pay the plaintiff a rent at the rate of P33.33 monthly from January 19, 1923, until the date of the delivery of the possession of the fishery aforesaid, and to pay the costs of this action.

The appellant prays for the reversal of this judgment, alleging that the trial court erred: (a) In overruling the demurrer filed by the defendant to the plaintiff's complaint; (b) in not finding that there was verbal extension of the contract of lease between the plaintiff and the defendant in order that the latter might continue in the possession of the fishery in question by paying the same rent he was paying to the Real Monasterio de Santa Clara before the same was sold to said plaintiff Cortes; (c) in sentencing the defendant to pay the sum of P10,800 as rents of the fishery in question up to the date of the filing of the complaint and the sum of P333.33 monthly from January 19, 1923, until the date of the delivery of the possession of said fishery; and (d) in not absolving the defendant from the complaint and in not sentencing the plaintiff to pay said defendant the value of the improvements placed by the latter on the land in question, which appear on Exhibits 1 and 2 and in the oral evidence, and which amount to the sums of P8,300, P7,800, and P4,047, that is to say, a total of P20,147.

The appellant's contention that the trial court had no jurisdiction to take cognizance of this case is based on the supposition that the original contract of lease, which the defendant had with the former owner, the Real Monasterio de Santa Clara, was extended from year to year until December 31, 1922; and a year not having elapsed yet from the last year of the extension until the filing of the complaint, it appears that the trial court had no jurisdiction originally to take cognizance of the action brought by the plaintiff.

In this regard his Honor, the judge who took cognizance of this case, says the following: "On account of the fact of the defendant not having delivered the possession of the fishery upon the expiration of the contract of lease, that is to say, on December 31, 1919, this plaintiff filed the complaint for forcible entry and detainer in the justice of the peace court of the municipality of Marilao, Bulacan, which action was not continued in view of the fact that this defendant offered to settle the matter and to pay the rent, thus entertaining him with promises and delays and paying partial amounts on account, to be applied upon the lease, when an agreement should have been arrived at upon the amount of the rent; but the plaintiff having learned that said defendant was entertaining him with propositions only to gain time for alienating, as he did in fact alienate, his properties, the plaintiff filed this complaint, with a petition for a preliminary attachment."

This finding of the trial court, which is not assailed by the appellant in his brief, appears supported by the preponderance 'of the evidence presented in this case. If, then, the original contract of lease terminated on December 31, 1919, and the plaintiff presented his complaint for forcible entry and detainer in the justice of the peace court of Marilao to recover the possession of the fishery leased; if the defendant offered to settle the matter and to pay the rent, entertaining Jhe plaintiff with promises and delays and paying him partial amounts on account, to be applied upon the lease when an agreement should have been arrived at upon the amount of the rent; if it is a fact that the parties have not entered into a new contract; it is clear, in our opinion, that the possession of the fishery by the defendant does not constitute an extension of the lease, much less so when in the original contract of lease said defendant has waived the right to a tacit renewal. This being so and more than three years of possession by the defendant having elapsed from the termination of the contract of lease entered into with the former owner of the fishery in question, it is manifest that the plaintiff had a right to file the action originally in the trial court to recover the possession of his property. The foregoing is enough for overruling the two assignments of error.

As to the third error it must be noted that the plaintiff-appellee, as owner of the property in question, not only had the right to consider the former lease terminated at the expiration of the term therein fixed, but also to charge a new amount of rent. (Art. 1571, Civil Code.) This doc- trine was repeatedly upheld by this court.

"A landlord has the right to increase the rent from and after the expiration of the period of the lease.

"Under a contract of lease of urban property for an indefinite period, notice by the lessor of an increase in the rent is equivalent to a notice of the termination of the original agreement. If the tenant thereafter continues in possession, without accepting the new terms proposed by the lessor, he becomes obligated to pay the reasonable value of the use and occupation of the property." (Iturralde vs. Magcauas, 9 Phil., 599.)

"The duration of a lease depends upon the stipulations in the contract of rental, and cannot be affected by the more or less valuable improvements voluntarily made by the lessee upon the property.

"A lessor has the right to increase the rent from and after the expiration of the period of lease, and if the tenant thereafter remains in possession without agreeing to the increase, he is bound to pay the reasonable value of the use and occupation." (Iturralde vs. Garduno, 9 Phil., 605.)

"A landlord has a right to increase the rent, to commence at the expiration of the contract of lease. If the tenancy is by the month or year, the owner of the land may, during the month or year, notify the tenant that the amount of rent will be increased or diminished following the termination of the tenant's contract. If the tenant continues in possession under these conditions he is then obliged to pay what is a reasonable amount for the use and occupancy of the same. The mere fact that the owner has fixed a certain amount as rent for said land for a new period does not necessarily fix the reasonable value for the use and occupation of said land. The reasonable value for the use and occupation under such conditions must be fixed by the court, after hearing proof." (Iturralde vs.

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Alfonso, 7 Phil., 576.)

"The landlord has a right to increase the rent for any new period not covered by a contract, by giving proper notice of his intention so to do. If the tenant continues in the possession of the property after the termination of his contract, he will be obliged to pay a reasonable amount for the use and occupation of such land. This reasonable amount is a question of evidence. (Varela vs. Suttrell, No. 1617.)" (Iturralde vs. Evangelista, 7 Phil., 588.)

The plaintiff-appellee, as new owner of the Hacienda de Marilao of which the fishery in question is an integral part, has the right to enjoy the fruits of his property whether natural, industrial or civil, and therefore has the right to fix the rent he deems fit. The defendant-appellant, after notice of the new rate of rent, could choose between paying the rent fixed by the owner and vacating the land. Whether or not the rent demanded by the owner is reasonable, is a question to be decided according to the evidence. The plaintiff introduced evidence that another person was willing to lease the same fishery at an annual rent of P3,900. This is a prima facie proof that the increase of the rent demanded by the plaintiff of the defendant is reasonable. And as the latter did not present any evidence to the contrary, except his own testimony that such a rent is excessive, we find no ground from the record for disturbing the finding of the trial court on this point.

The last assignment of error has reference to the counterclaim set up by the defendant for the improvements which, he says, were introduced by him on the fishery in question. These improvements may have been made either before or during the time the contract of lease was in force, or after the expiration of the period of the said contract. If before or during said lease, it must be noted that the fifth clause of said contract Exhibit B expressly provides that all improvements made or to be made in the fishery in question should belong to the owner. If after, inasmuch as the appellant has not made a new contract with the appellee, the continuance of his possession of the fishery ceased to be lawful, and he had no right to introduce any improvement on another's property without the consent and authority of the owner. But supposing that the de- fendant made those improvements in the belief that he could still make a new contract of lease with the plaintiff and thus regard himself as such a lessee, nevertheless, he would, in that case, have no more right than what is given by article 1573 of the Civil Code. This article provides that the lessee has the same right as the usufructuary with respect to the useful and voluntary improvements; and the usufructuary, according to article 487, may make useful improvements on the property held in usufruct, but without any right to indemnity, although he may remove said improvements if it is possible to do so without injury to the property. By this we mean that the claim of the appellant to the amount set forth in his counterclaim must be overruled.

For all of the foregoing, the judgment appealed from must be, as is hereby, affirmed with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Avanceña, Ostrand, and Romualdez, JJ., concur.

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