

EMILIANO T. RAMIREZ, PLAINTIFF-APPELLEE, VS. JOSE SY CHIT, DEFENDANT-APPELLANT.*G.R. No. 22022. December 26, 1967*

Ponente: MAKALINTAL, J.

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Appeal by defendant from the order dated June 10, 1963 as well as from the decision dated August 12, 1963 of the Court of First Instance of Manila, the first granting plaintiff's motion for execution pending appeal, of the judgment of the Municipal Court in its Civil Case No. 102319, and the second affirming the said judgment.

Plaintiff is the owner of a parcel of land located at Claro M. Recto Avenue City of Manila, a portion of which, with an area of 188.30 square meters, more or less, had been leased to defendant since 1946 at a monthly rental of P230.00, payable in advance within the first five (5) days of every month. The lease agreement was not reduced to writing. In two separate written notices, one on June 15, 1962 and the other on the following September 4, plaintiff informed defendant of his intention to terminate the lease contract for the reason that he was going to construct a three-storey building on the land. Defendant then had constructed a building thereon, with an assessed value of P6,000.00, and thereafter continued introducing other improvements although he was not personally occupying the same.

Defendant failed to heed the demand to vacate, and so plaintiff, on September 28, 1962, commenced an action for ejectment (Civil Case No. 102319) in the Municipal Court (now City Court) of Manila. Defendant interposed, as special defense, Article 1687 of the Civil Code and asked that the court fix the period of the lease. After due trial the court, on December 17, 1962, rendered a decision the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING, the Court hereby fixes June 30, 1963 as the date when the contract of lease shall terminate between the parties. The defendant and all persons claiming title under him are hereby ordered to pay the plaintiff the accruing rentals at the agreed rate; to vacate the premises located at Nos. 420-424 Claro M. Recto Avenue, Manila after June 30, 1963; to pay also the sum of P200.00 as and for attorney's fees, plus the costs of the suit.

Should the defendant fail to vacate the premises after the said date he shall be held liable to pay the plaintiff the sum of P25.00 a day for every day of delay as damages until he finally vacates the premises, in addition to the agreed current rental that may accrue.

Defendant's counterclaim is hereby ordered dismissed for lack of merit."

Not satisfied with the above decision, defendant appealed to the Court of First Instance. During the pendency of the appeal plaintiff moved for execution, alleging the failure of the defendant to pay the rents for the months of April and May 1963. On June 10, 1963 the trial court granted the motion and ordered execution of the municipal court's decision. Defendant moved to reconsider, alleging that he tendered payment to plaintiff's lawyer of the rents for the said months on May 28, 1963, but that it was not accepted. At the hearing of the motion the parties submitted the case for decision on the basis of a stipulation of facts. On August 12, 1963 the trial court rendered

judgment as follows:

"WHEREFORE, the judgment is hereby rendered affirming the appealed decision in toto; and ordering the immediate execution of the same conformably to the order dated June 10, 1963, which is hereby reaffirmed. The defendant shall pay the costs."

In this appeal appellant avers that the trial court erred: (1) in issuing the order of execution dated June 10, 1963; (2) in not finding that the Municipal Court had no jurisdiction over the subject matter of the action; (3) in not holding that the appellant was entitled to a longer duration of the lease; (4) in sentencing appellant to pay damages of P25.00 a day, in addition to the monthly rents; and (5) in awarding appellee attorney's fees and costs, instead of doing so in favor of appellant.

The order of execution dated June 10, 1963 is assailed on the ground that it was premature, since the decision of the municipal court sought to be executed fixed the duration of the lease up to June 30, 1963 and therefore was not yet executory. Appellant's submission on this point is without merit. The extended period granted to him pursuant to Article 1687 of the Civil Code was not absolute, but carried the condition that he should pay the current rentals. The decision of the Municipal Court said:

"To give defendant's sub-lessee enough time to move out from the premises, this Court fixes June 30, 1963 as the date when the contract of lease shall terminate, provided defendant pays the current rental." (underlining supplied.)

In any event, the question has become moot, because execution was carried out, not on June 10, 1963, nor even on June 30, 1963, but after the confirmatory decision of the Court of First Instance on August 12, 1963.

On the second error assigned, appellant contends that the Municipal Court should have dismissed the action for lack of jurisdiction, because the special defense raised by him invoking Article 1687 of the Civil Code was a new matter which transformed the action into one for the fixing of the duration of the lease, which pertains exclusively to the jurisdiction of the Court of First Instance.

The contention is untenable. The action is for ejectment, as made out by the allegations in the complaint. The exercise of the power given to the court in Article 1687, to extend the period of the lease when the defendant has been in occupancy of the premises for more than a year, does not contemplate a separate action for that purpose. That power may be exercised as an incident in the action for ejectment itself and by the court having jurisdiction over it. Otherwise the summary character of this action would be defeated.

Appellant says that he should have been granted a longer period of at least two years. The power of the court in this regard is discretionary, and there is no evidence that the Municipal Court abused its discretion here. Appellant did not need the disputed premises for himself, for as stated in the decision appealed from he was not personally occupying the same but had it subleased to others, from whom he was deriving no little income. The period given to him was quite reasonable, being more than a year from the time the first notice to vacate was served upon him.

The trial court held defendant liable "to pay plaintiff the sum of P25.00 a day for every day of delay as damages until he finally vacates the premises, in addition to the agreed current rental that may accrue." This is an error. The damages recoverable by the plaintiff under section 1, Rule 70 (formerly Rule 72) are those which correspond to the reasonable value of the use and occupation of the property, which in this case is the agreed monthly rental of P230.00. The award, therefore, of P25.00 as damages for every day of delay in addition to the agreed monthly rent is without basis in law.

On the question of attorney's fees in the sum of P200.00 awarded to plaintiff, the lower court did not err. Defendant continued the litigation unjustifiably, even up to this Court after he had been granted a reasonable

extension of the lease. Plaintiff has been put to unnecessary expense and trouble to protect his interest, and under the circumstances the award finds sanction in Article 2208 of the Civil Code.

WHEREFORE, the decision appealed from is affirmed, with the modification that the award of damages is set aside. Costs against appellant.

Concepcion, C.J., Reyes, JBL, Dizon, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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