

SANTIAGO SY JUCO AND JOSE DEL R. JEUQUECO, PLAINTIFFS AND APPELLANTS, VS. DONATA MONTEMAYOR, CLODUALDO VITUG, AMBROSIA SALAO, JUAN SALAO AND JOSEFA EVANGELISTA, DEFENDANTS AND A...*G.R. No. 28230. September 17, 1928*

Ponente: JOHNSON, J.

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This action was commenced in the Court of First Instance of the Province of Rizal on October 11, 1922. Its purpose was (1) to recover from all of the defendants several sums of money aggregating P50,550 as damages for alleged noncompliance by the defendants with the provisions of certain contracts of lease and sublease of a fishery situated in the municipality of Lubao, Province of Pampanga, and for repairs made on said fishery by the plaintiffs; and (2) to recover from the defendants Ambrosia Salao, Juan Salao and Josefa Evangelista the sum of P7,833.90 as the unaccrued portion of the rental for said fishery paid to them in advance by the plaintiffs. The plaintiffs prayed for a judgment in their favor and against the defendants for said amounts, and costs. They also prayed that the contract of sublease, under which they held possession of the fishery be rescinded.

The defendants Donata Montemayor and Clodualdo Vitug denied generally and specifically each and every allegation of the complaint.

The defendants Ambrosia Salao, Juan Salao and Josefa Evangelista, in their amended answer of May 20, 1927, denied generally and specifically each and every allegation of the complaint and set up a counterclaim for the sum of P2,000.

Upon the issue presented by the above pleadings the cause was brought on for trial. On the 31st day of May, 1927, the Honorable Antonio M. Opisso, judge, after a careful consideration of the evidence adduced during the trial of the cause, rendered a judgment in favor of the plaintiffs and against the defendants Donata Montemayor and Clodualdo Vitug in the following sums: (a) P8,550 for reimbursement of expenses for repairs made by the plaintiffs on the fishery; (b) P12,000, the value of fish which escaped from the fishery for the failure of the defendants Montemayor and Vitug to make necessary repairs thereon and (c) P4,000, the value of fish contained in the portion of said fishery taken by one Simeon Bias, pursuant to the judgment rendered in a litigation between him and the defendants Montemayor and Vitug. The lower court further rendered a judgment in favor of the plaintiffs and against the three defendants Ambrosia Salao, Juan Salao and Josef a Evangelista in the sum of P7,833.90, representing the unaccrued portion of the rental which had been paid to them in advance by the plaintiffs. The court allowed interest at 0 per cent on all of said sums from the 11th day of October, 1922, the date of the commencement of this action.

As to the rescission of the contract prayed for by the plaintiffs and the alleged damages resulting from said rescission, the lower court said:

"En cuanto al quinto motivo de accion, no ha lugar a acceder a lo alii pedido, por no haber presentado pruebas respecto al mismo y por haber las partes, de mutuo acuerdo, rescindido el contrato y entregado la posesion de la pesquera el 1. de mayo de 1923."

From said judgment plaintiffs and defendants appealed.

In this appeal the plaintiffs-appellants contend that the lower court committed an error:

"(1) In not sentencing all the defendants Ambrosia Salao, Juan Salao, Josefa Evangelista, Donata Montemayor and Clodualdo Vitug, to pay the sums of P8,550, P12,000, P4,000 and P7,833.90 found and adjudicated as due to herein plaintiffs;

"(2) In not awarding to the plaintiffs damages for the value of fish which escaped out by reason of the acts of Simeon Bias; and

"(3) In not awarding to the plaintiffs damages resulting from the rescission of the contract."

The defendants-appellants Donata Montemayor and Clodualdo Vitug contend that the lower court erred in ordering them to pay to the plaintiffs the following sums: (a) P8,550 for repairs of the fishery; (b) P12,000 for damages, representing the value of fish that escaped out; and (c) P4,000 as indemnity for the value of fish included in the portion of the fishery taken by Simeon Bias.

The defendants-appellants Salao and Evangelista contend that the lower court committed an error in rendering a judgment against them and in favor of the plaintiffs in the sum of P7,833.90, representing the unaccrued portion of the rental paid to them in advance by the plaintiffs.

The following facts are not disputed:

The spouses Donata Montemayor and Clodualdo Vitug were the owners of a fishery located in the barrio of Bancal Sinubli, municipality of Lubao, Pampanga, with an area of about 80 hectares, more particularly described as follows:

"Linda por el norte con el Rio Magtapat; por el este con la pesquera de D. Romulo Mercado; por el sur con el Rio Bancal Sinubli; y por el oeste con la propiedad de Dna. Irene Santos. Esta pesquera mide (80) ochenta hectareas, (80) ochenta y seis areas y (81) ochenta y una centiareas. Esta medicion es la que se encuentra en el piano hecho por el agrimensor D. Francisco Licuanan aprobado en el Buro de Terrenos de fecha 3 de septiembre de 1917."

On September 27, 1917, Donata Montemayor and Clodualdo Vitug executed and delivered a contract of lease of said fishery in favor of Ambrosia Salao and Josefa Evangelista for a period of three years, from September 30, 1917, to September 30, 1920 for the sum of P9,000, which was paid at the time of the execution of the contract (Exhibit T). Later the owners leased said fishery to Ambrosia Salao for one year, from October 1, 1920 to October 1, 1921. On March 3, 1920, the owners executed and delivered another contract of lease of said fishery in favor of Ambrosia Salao, Juan Salao and Josefa Evangelista for a period of two years, to wit, from October 2, 1921 to October 2, 1923, for the sum of P10,000, which amount was paid in advance at the time of the execution of the contract (Exhibit A). The rights and obligations of the lessors and lessees, as expressly stipulated in said contract Exhibit A are as follows:

"(b) Que como condicion accesoria del mismo, se hace saber ademas, que esta pesquera se halla en litigio con D. Simeon Bias, de Malabon, Rizal, y en el caso que por una orden judicial se segregare parte de esta pesquera reclamada por Simeon Bias y se le adjudique a su propiedad, el precio de cada ano de este arrendamiento sera reducido a una parte proporcional, tomarido por base el precio anual de cada hectarea del arriendo, hasta que las cantidades tomadas y aplicadas al arrendamiento primitivo sean completamente saldadas por el canon de la

pesquera bajo bases arriba convenidas.

"(c) Que los propietarios arrendadores se hacen responsables del saneamiento y eviccion en toda la extension marcada por la ley, asi como de los perjuicios que Simeon Bias pueda irrogar contra los derechos de posesion y disfrute de la pesquera objeto de este contrato, a los arrendatarios o segunda parte de este contrato.

"(d) Que la descrita pesquera serd entregada al terminar el plazo de arriendo en la misma condicion como se la hallare al hacer la entrega a los arrendatarios.

"(f) Que todos los desperfectos por el uso de esta pesquera han de ser a cargo de los duenos."

On June 25, 1920, the lessees Ambrosia Salao, Juan Salao and Josefa Evangelista executed and delivered a so-called contract of sublease (Exhibit B) of said fishery in favor of the plaintiffs Sy Juco and Jeuqueco for a period of three years, from October 1, 1920 to October 1, 1923, for a rental of P17,700. Of this amount, P7,700 was paid at the time of the execution of the contract and the balance of P10,000 on September 30, 1920.

The rights and obligations of the parties, under the terms of the contract Exhibit B, are expressly stipulated as follows:

"(a) Que los Sres. Joso del R. Jeuqueco y Santiago Sy Juco seran conocidos por medio de la presente como subarrendatarios de la finca, y como tales, a falta de este convenio las disposiciones de Ley sobre este contrato seran las que deben suplir para su debida resolucidn de cualquier desarreglo de las partes.

"(c) Que el plazo de este subarrendamiento es de tres anos comenzando desde el 1.º de octubre de 1920 hasta el 1.º de octubre de 1923. Entendiendose, sin embargo, que los derechos de los arrendatarios Sres. Juan Salao, Ambrosia Salao y Josefa Evangelista, sobre la disminucion del precio del arriendo en el caso que Simeon Bias ganare el pleito contra los propietarios, se entenderan transmitidos, asi como cualesquier derechos y obligaciones de los citados Juan Salao y Co., a favor de los ultimos o Sres. Jose Jeuqueco y Santiago Sy Juco y a sus herederos.

"(d) Que las condiciones establecidas en el contrato de arrendamiento se entenderan transmitidas a los subarrendatarios con los derechos y obligaciones que reciprocamente tienen las primitivas partes."

Pursuant to said Exhibit B the plaintiffs took possession of the fishery on October 1, 1920.

During the trial the plaintiffs and the defendants Montemayor and Vitug entered into the following stipulation:

"Las partes hacen constar que en virtud del convenio habido entre las mismas y que aparece en el documento marcado como Exhibit Q, la posesion de la parte de la pesquera no ocupada por Simeon Bias ha sido entregada a Donata Montemayor y su marido."

Exhibit Q shows that the fishery was returned by the plaintiffs to Montemayor and Vitug on May 1, 1923, with the following reservation on the part of the plaintiffs:

"Esto se debe entender sin perjuicio de cualquiera accion que ya tengamos o pudieramos tener en relacion con dicha pesqueria."

A preponderance of the evidence shows the following facts:

When the plaintiffs took possession of the fishery on October 1, 1920, they found the dikes in bad condition, requiring immediate repairs. This fact was immediately communicated by Sy Juco to the defendant Ambrosia Salao. The latter, invoking the terms of the contract Exhibit B, stated that all her rights and obligations as lessee of the fishery had been transferred to the plaintiffs, and that the plaintiffs should directly take up the matter of repairs with the owner Donata Montemayor. Sy Juco went to see Montemayor about the question of repairs, and it was

agreed between them that, inasmuch as Montemayor did not have money at that time, Sy Juco would advance the expenses for the necessary repairs and that Montemayor would reimburse him later. Pursuant to this understanding repairs were made on the fishery in October and November, 1920, at the expense of Sy Juco in the sum of P6,752.67.

In July or August, 1921, the fishery was again in bad condition, and with the consent of the defendant Donata Montemayor repairs were again made by Sy Juco for her account, amounting to P1,797.00. Thus the total expenses for repairs made on the fishery by the plaintiffs for the account of the defendants Donata Montemayor and Clodualdo Vitug, amounted to P8,550.27, or P8,550 in round numbers, as found by the lower court.

On or about July 2, 1922, the fishery being again in a dilapidated state, the plaintiffs addressed a letter (Exhibit L) to the defendants Montemayor and Vitug, requesting them to make repairs on the dikes. Six days later, or on July 8, 1922, the plaintiffs again addressed to said defendants another letter (Exhibit M) the pertinent part of which reads as follows:

"Aside from damages from Mr. Simeon Bias we have been damaged because of the weakness of the earthen fence around the fishpond which too weak to resist longer. It is not convenient for us any more to pay for the repairs. If for instance the fishpond may be broken and its contents thrown out it is you who must have the blame for we have, time and time again told the matter to you. We don't like to go further in paying rent. We have before shoulder up the expenses alone. We are begging you to pay the amount which we have paid according to clause 'F' of the legal papers signed before the person of Pedro Pascual, a notary public of this province.

"After all these things and after we have not yet receive any letter from or if you fail yet to make repairing on the fishpond, we will be forced to ask for the rescission or return the fishpond to you and ask therewith all the payments for rent that we made and also we shall be obliged to do all so that you may pay for damages on the thrown fish and on the fish still in the fishpond we, being unable to catch them in face of Mrs. Simeon Bias rejection to permit us to catch them."

Said letter (Exhibit M) was followed by another (Exhibit I) addressed to all of the defendants. In this letter the plaintiffs expressed their intention to return the fishery and to have the contract rescinded, in view of the defendant's failure to make repairs. No answer was made to either of said letters.

On September 18, 1922, on account of heavy rains and flood, and due to lack of necessary repairs, the dikes broke down in four sections of the fishery, and the fish escaped out. The damage suffered by the plaintiffs, representing the value of fish thus lost, was estimated by the lower court, from data furnished during the trial, at P12,000.

Pursuant to the judgment rendered in favor of one Simeon Bias in a litigation between him and Donata Montemayor, the former took possession of a section of the fishery in question, including all of the fish contained therein. From data furnished during the trial the court estimated the value of the fish so taken by Simeon Bias at P4,000.

There are three questions to be decided in this appeal, to wit:

- (1) Are the defendants liable for the cost of repairs made by the plaintiffs and for damages suffered by them?
- (2) Are the plaintiffs entitled to recover from the defendants Salao and Evangelista the unaccrued portion of the rental amounting to P7,833.90?
- (3) Are the plaintiffs entitled to recover damages resulting from the rescission of the contract (Exhibit B)?

As above stated, the plaintiffs took possession of the fishery on October 1, 1920, under the terms of the so-called

contract of sublease (Exhibit B), executed in their favor by the defendants Salao and Evangelista. A careful reading of said contract, particularly of the clauses above quoted, shows that under the terms thereof the defendants Salao and Evangelista, as lessees of the fishery in question, sold and transferred to the plaintiffs, for a consideration of P17,700, all of their rights and obligations as such lessees. The defendants Salao and Evangelista substituted the plaintiffs in their place and stead with reference to their relation as lessees to their lessors Isonata Montemayor and Clodualdo Vitug. In other words, they made an absolute and complete assignment to the plaintiffs of their lease on the fishery, including all of their rights and obligations as such lessees. (See clauses [c] and [d] of Exhibit B quoted above.)

It is true that contract Exhibit B is called by the parties "contrato de subarrendamiento" and the plaintiffs are designated therein as "subarrendatarios." However a careful examination of said contract shows that its real nature, purpose and effect is to make a complete assignment to the plaintiffs of the lease held by Salao and Evangelista. Such assignment has the effect of creating the relation of lessees and lessors between the plaintiffs and the owners of the fishery, Donata Montemayor and Clodualdo Vitug, with the same identical rights and obligations specified in the original contract of lease (Exhibit A) between Salao and Evangelista as lessees and said owners as lessors. Furthermore, the contract of assignment (Exhibit B) specifically so provided, as follows:

"(d) Que las condiciones establecidas en el contrato de arrendamiento (Exhibit A) se entenderan transmitidas a los subarrendatarios con los derechos y obligaciones que reciprocamente tienen las primitivas partes."

Manresa, commenting on the effect of the assignment of a lease and the relation which it creates between the owner of the property and the assignee (in this case, the plaintiffs), says:

"Piensa el arrendatario que sobre la cosa arrendada le corresponde un derecho para ejercitar contra el arrendador a cambio de las obligaciones que por su parte tiene que cumplir, y este derecho, con todos sus accesorios, con todas las acciones que le son anejas en los distintos casos y momentos de su ejercicio, y con todas las obligaciones que lo condicionan, lo transmite de una vez, en un solo acto, sin ulteriores propositos de responsabilidad por razon del mantenimiento del uso y goce del cesionario.

"4. Que el cesionario tiene accion directa contra el arrendador para exigir de el el cumplimiento de todas las obligaciones que este estipulo' con el arrendatario, de igual modo que el esta tambien directamente obligado con el propio arrendador por razon de todo lo que se deriva del contrato." (Vol. 10, Manresa, pp. 498, 499.)

It follows from the foregoing that the plaintiffs and the defendants Donata Montemayor and Clodualdo Vitug stand in the relation of lessees and lessors, respectively, with the rights and obligations specified in contracts Exhibits A and B. Therefore, (1) the cost of repairs made by the plaintiffs on the fishery to keep it in serviceable condition; (2) the damages suffered by them by reason of the failure of the owners to make necessary repairs on the dikes; and (3) the damages suffered by said plaintiffs by reason of the segregation of the portion of said fishery taken by Simeon Bias, should be paid by the owners of said fishery pursuant to the specific terms of the contracts Exhibits A and B and the provisions of the Civil Code.

The fact that the assignment of the lease was made without the consent of the owners, as alleged by them, does not vitiate the assignment. In the first place, said assignment was subsequently ratified by Donata Montemayor, when in 1920 and 1921 she allowed the plaintiffs to make the repairs for her account, as above stated. In the second place, according to Manresa, the consent or knowledge of the owner of the property is not necessary for the validity of an assignment of lease. On this question he says:

"Y nosotros creemos que el arrendamiento, se halle o no inscrito, constituya o no un derecho real, es un derecho transmisible, siempre y cuando, naturalmente, no se haya prohibido expresamente la transmision, y que no existiendo esta prohibicion, puede transmitirse sin la autorizacion del duefio." (Vol. 10, Manresa, p.

504.) In fact, we see no reason for the necessity of the owner's consent or knowledge. His rights and obligations as lessor are not increased or diminished by reason of the assignment. They remain identically and exactly the same, without any alteration whatsoever.

The lower court committed no error therefore in rendering a judgment in favor of the plaintiffs and against the defendants Montemayor and Vitug for cost of repairs and damages, and in relieving the other defendants from said liability.

Plaintiffs-appellants contend in their second assignment of error that they are entitled to damages for the value of fish which escaped out when Bias segregated the portion recovered by him from Donata Montemayor. On this question the lower court said:

"El Juzgado estima que, aun admitiendo que Simeon Bias hubiese de proposito abierto las compuertas y dejado escapar parte de los peces que se hallaban en la seccion de la pesquera en donde se hallaba la porcion que correspondio a Simeon Bias en el litigio sostenido con Donata Montemayor, de este dano causado no puede hacerse responsable a Donata Montemayor ni a Clodualdo Vitug ni a alguno de los otros demandados, puesto que si el contrato Exhibito A contenia una disposition al efecto de que los arrendadores se hacian responsables de los perjuicios que se ocasionaron a los arrendatarios por Simeon Bias contra los derechos de posesion y disfrute de la pesquera objeto del contrato, dichos perjuicios deben entenderse unicamente como los que naturalmente pudiesen ocasionarse con motivo de los actos legales de Simeon Bias, pero no los que resultaron por cualquier atropello por este. De aqui que el Juzgado en cuanto a este tercer motivo de action de la demanda entiende que Donata Montemayor es solamente responsable de los peces que se hubiese apropiado Simeon Bias o que hubiesen quedado comprendidos dentro de la porcion de la pesquera de que se posesiond, pero no por aquellos que de intento dicho Simeon Bias hizo escapar, a menos que hubiese probado que el boquete abierto por Simeon Bias se hizo necesario para la construction de los diques de separacion de su porcion, prueba que el Juzgado no encuentra suficientemente establecida por las partes."

We are of the opinion that the lower court is correct in its reasoning and conclusion above quoted.

The foregoing discussion of the first two assignments of error of the plaintiffs-appellants, answers also the assignments of error of defendants-appellants Montemayor and Vitug.

In their third assignment of error the plaintiffs-appellants contend that they should have been awarded damages in the sum of P10,000 by reason of the rescission of the contract.

The proof shows that the plaintiffs had to abandon the fishery, due to its dilapidated condition, in September, 1922, that is a little over a year before the expiration of the contract of assignment, and that they had to abandon it because of the failure of the defendants Montemayor and Vitug to make necessary repairs in spite of repeated demands made upon them. The lower court denied this claim for damages on the ground that the contract was rescinded by mutual consent of the parties, and on the further ground that no evidence of damages was presented by the plaintiffs.

Our examination of the record shows that no such rescission took place. The parties only stipulated as a fact, that the defendants Montemayor and Vitug took possession of the fishery on May 1, 1923 (Exhibit Q). Even if such stipulation and the terms of Exhibit Q be interpreted as a rescission of the contract by mutual consent, yet the plaintiffs have expressly reserved in said Exhibit Q whatever right they had or might have in connection with said fishery. ("Esto se debe entender sin perjuicio de cualquiera action que ya tengamos o pudieramos tener en relacidsn con dicha pesqueria.")

There is no question that the plaintiffs had abandoned the fishery one year prior to the expiration of the contract. They are therefore entitled to recover from the defendants Montemayor and Vitug the benefits which they might

have derived from the fishery during that period. The proof shows that in the year 1920 they made a net profit of P11,395.50 from the operation of the fishery (Exhibit R). Taking this as a basis, the plaintiffs are entitled to at least P10,000 as demanded in the complaint, and this sum should have been allowed in their favor and against Montemayor and Vitug.

The appellants Salao and Evangelista contend in their assignment of error that the contract between them and the plaintiffs (Exhibit B) is a contract of assignment of lease, and that they are not liable for any portion of the price paid to them by the plaintiffs.

As we have demonstrated above, said contract Exhibit B is an assignment of the lease held by the defendants Salao and Evangelista. They sold and transferred said lease to the plaintiffs for the sum of P17,700, and the plaintiffs became the lessees by substitution. The defendants Salao and Evangelista have executed fully and faithfully their part of the contract, which was to deliver the fishery to the plaintiffs and to transfer to them all of their rights and obligations as original lessees of the property. They have not failed in any of their obligations as assignors. The sum of P17,700 which they received from the plaintiffs was in full payment for the rights and obligations they had assigned to the plaintiffs. Having thus discharged fully and faithfully their part of the contract, they cannot be made liable to the assignees for whatever damage the latter may subsequently suffer in the possession of the fishery. The fact that the plaintiffs abandoned the property one year prior to the expiration of the contract was not due to the fault of Salao and Evangelista, and they cannot be made to pay for damages occasioned by the fault of others. Furthermore, the plaintiffs are not entitled to recover any unaccrued portion of the rental. In lieu thereof, they get damages growing out of the rescission of the contract in the sum of P10,000 as above stated. Therefore, the lower court erred in holding the defendants Salao and Evangelista liable to the plaintiffs in the sum of P7,833.90, representing the unaccrued portion of the rental.

In harmony with all of the foregoing, the judgment of the lower court should be modified, and a judgment should be and is hereby rendered in favor of the plaintiffs and against the defendants Montemayor and Vitug for the following sums:

P8,850 for cost of repairs made on the fishery in 1920 and 1921;

P12,000 as damages representing the value of fish that escaped out due to defendants' failure to make necessary repairs;

P4,000 as damages representing the value of fish contained in the portion of the fishery taken by Simeon Bias; and

P10,000 as damages resulting from the rescission of the contract, due to fault and negligence of defendants Montemayor and Vitug.

The defendants Ambrosia Salao, Juan Salao and Josefa Evangelista are hereby relieved from all liability under the complaint. And without any finding as to costs, it is so ordered.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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