

ROSA FOJAS ET AL., PLAINTIFFS AND APPELLANTS, VS. PANTALEON VELASCO ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 28295. February 14, 1928*

Ponente: MALCOLM, J.

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Severa Trinidad, Susana Clemente, Severa Clemente, Concepcion Clemente, and Buenaventura Clemente are the owners of a parcel of land situated on Calle Juan Luna, City of Manila. Beginning with the year 1916, Rosa Fojas and her husband, Andres V. Jose, have been occupying this land as lessees. As such, they took it upon themselves to construct camarins and a house of mixed materials. Repairs and additions to the buildings have been made until it is claimed the total amount of the improvements has reached to over P17,000. On September 14, 1923, when Mr. and Mrs. Jose were already in possession, the owners executed a contract of lease of the land in favor of Mr. and Mrs. Jose at a monthly rental of P43, payable at the end of each month, and without fixing the term of the lease. Thereafter, the lessees contend that there was a modification of the contract of lease extending the prior contract at the same amount for a period of ten years. At any rate, the owners, gaining knowledge of this asserted right, on November 15, 1926, notified the lessees that beginning with the month of January, 1927, the monthly rent would be raised to P100 a month. The parties thereupon endeavored to agree upon some sort of a settlement, but were unable to do so.

Action instituted in the Court of First Instance of Manila by Rosa Fojas and Andres V. Jose as plaintiffs and against Pantaleon Velasco and others as defendants is the result. The plaintiffs asked for a judgment ordering the defendants to execute a new contract of lease in favor of the plaintiffs, or to pay to the plaintiffs the sum of P17,000 as damages. In addition to pleading the Statute of Frauds, the defendants, by way of crosscomplaint, requested the court to declare terminated the lease as of December 31, 1926, to issue an order to plaintiffs to deliver the land to defendants, and to order plaintiffs to pay defendants, except Pantaleon Velasco, the sum of P100 a month from January 1, 1927, until the land shall have been delivered to defendants. On these pleadings, after trial, the judgment rendered by Judge Harvey dismissed plaintiffs' complaint, and gave judgment on defendants' crosscomplaint as prayed for therein. The appeal taken from this judgment by the plaintiffs can be quickly disposed of.

The alleged oral agreement for a supplemental lease of real property for a longer period than one year is within the Statute of Frauds. An agreement to enter into an agreement is within the Statute of Frauds, and the promise is not enforceable unless the statute is satisfied. The oral agreement to execute a lease cannot be enforced. (Code of Civil Procedure, sec. 335; Santos vs. Rivera [1915], 33 Phil., 1; Rio y Olabarrieta and Molina vs. Yu Tec & Co. [1926], 49 Phil., 276; 27 C. J., 214, 335, 336.)

The case is governed not by articles 361 and 453 of the Civil Code as contended by appellants, but by articles 1573 and 487 of the same Code, as indicated by appellees. In this connection, it need only be recalled that the lessees have been holding the land under a rental contract. Accordingly, upon termination of the lease, the right of the lessees with respect to improvements placed by them on the leased property is determined by article 487,

which entitles them to remove the improvements, provided they leave the property in substantially the same condition as when they entered upon it. (Alburo ve. Villanueva [1907], 7 Phil., 277; Cortes vs. Ramos [1924], 46 Phil., 184; Rivera vs. Trinidad [1925], 48 Phil., 396.)

The judgment under observation is correct both in fact and law. It may be well, however, out of extreme consideration for the rights of the plaintiffs, to make an express reservation thereof as provided by articles 1573 and 487 of the Civil Code. In order to terminate the matter definitely, a period of three months from receipt of the record in the lower court is named within which the plaintiffs may remove their improvements, provided they leave the property as they found it.

Subject to the reservation above indicated, the judgment is affirmed, without special finding as to costs in this instance.

Johnson, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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