

JOSEFINA RUBIO DE LARENA, PLAINTIFF AND APPELLANT, VS. HERMENEGILDO VILLANUEVA, DEFENDANT AND APPELLEE.

G.R. No. 29155. November 05, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

The case at bar is a sequel to case G. R. No. 21706, Josefina Rubio de Larena vs. Hermenegildo Villanueva, decided on March 26, 1924.[1] In that case we affirmed a decision of the Court of First Instance ordering the rescission of a lease of the Tacgajan Sugar Plantation and the payment by the defendant-lessee of the unpaid balance of the rent for the agricultural year 1920-1922 in the sum of P5,949.28 with interest from August 26, 1922, and for P8,000 in rent for the agricultural year 1921-1923. The decision also provided that the possession of the leased land be delivered to the plaintiff.

Shortly after the record was returned to the court below, a writ of execution was issued, but before levy was made the parties came to an agreement, under which the money judgment was to be satisfied by the payment of P10,500 in cash and the transfer to the plaintiff of a dwelling house situated in the municipality of Bais. The agreement was carried out in accordance with its terms, and on September 30, 1924, the following document was executed by the plaintiff:

"Habiendo llegado a un convenio entre la que subscribe, ejecutante, en la causa civil No. 67 decidida por la Corte Suprema, y el ejecutado, Don Hermenegildo Villanueva, por la presente declaro haber recibido del Sheriff Provincial de Negros Oriental, y a mi entera satisfaccidn la suma de diez mil quinientos pesos (P10,500), mas una casa residencial con su solar, situada en la plaza del Municipio de Bais, Provincia de Negros Oriental, cuyas descripciones aparecen en un documento aparte, por el importe de la ejecucion expedida por el Juzgado de Negros Oriental el 14 de mayo de 1924, en virtud de una decision de la Corte Suprema. Con este queda definitivamente cumplimentada esta ejecucion.

"Y para que asf conste, firmo la presente en el Municipio de Bais, Provincia de Negros Oriental, I. F., ante el Sheriff Provincial de esta Provincia de Negros Oriental y el Notario Publico Don Francisco Romero, que ratifica este compromiso.

"(Fda.) JOSEFINA RUBIO, Vda. DE LARENA

"Firmado en presencia de:

"(Fdos.) BRAULIO RUBIO

"FRANCISCO PIÑERO"

(ACKNOWLEDGMENT)

In the meantime, the defendant had harvested the sugarcane crop produced in the agricultural year 1922-1924, and after having satisfied the aforesaid money judgment, he also continued in possession of the plantation long enough to appropriate to himself the following ratoon cane crop.

The present action was brought on April 13, 1925, but the last amended complaint, setting forth three causes of action, was not filed until June 17, 1927. As her first cause of action the plaintiff, after a preliminary statement of the origin of the controversy, alleges that while case G. R. No. 21706 was on appeal to the Supreme Court, the defendant knew positively that the aforesaid lease was declared rescinded by the Court of First Instance on September 8, 1923, and that he, the defendant, also knew that he thereafter was not entitled to the possession of the aforesaid hacienda; that he, nevertheless, in bad faith continued in such possession during the agricultural year 1922-1924 and appropriated to himself the cane harvest for that year, which after deducting the share of the sugar central, produced 1,679.02 piculs for his own benefit, which sugar was sold by him for the sum of P13 a picul; that the plaintiff has demanded payment to her of the total value of said 1,679.02 piculs, amounting to P21,827.26, but that the defendant refuses to pay. The plaintiff, therefore, asks judgment for the sum of P21,827.26 upon the first cause of action.

For a second cause of action the plaintiff alleges that under the contract of lease of the Tacgajan Hacienda, one of the obligations assumed by the defendant was that he would use the care of a good father of the family in conserving the tools, agricultural implements, draft animals, and other effects enumerated in an inventory made at the time the defendant entered in possession under the lease; that he was further obligated to return said property to the plaintiff, but that he returned only a part thereof and failed to return 4 carabaos, 4 vacunos, 1 corn mill, 4 wagons, 106 steel rails, 14 plows, 1 table, 1 scale, and 1 telephone, the total value of the property enumerated being P3,596 for which amount, plus P500 in damages, the plaintiff asks judgment under her second cause of action.

As a third cause of action the plaintiff alleges that the harvest of sugar cane illegally made by the defendant in 1924 left ratoon sugar cane in the fields of the hacienda, which sugar cane was the property of the plaintiff, and that during the year 1925, the defendant illegally harvested said ratoon cane together with some recently planted cane, which harvest after deducting the share of the sugar central, produced 1,613.25 piculs of sugar, which the defendant sold for his own benefit at the price of P13 per picul, the total amount received by him being P20,962.25 for which the plaintiff demands judgment.

In his answer to the first and third causes of action, the defendant alleges that according to the pleadings in case G. R. No. 21706, the two causes of action were included in that case and, therefore, must be considered res adjudicata. In regard to the second cause of action the defendant pleads the general issue and sets up as a special defense that assuming that the property referred to in said cause of action was missing, its loss was due to its total extinction by ordinary use, for which the defendant could not be held responsible. For all three causes of action, the defendant sets up as a special defense the document executed by the plaintiff on September 30, 1924, acknowledging the satisfaction of the judgment in case G. R. No. 21706.

Upon trial the Court of First Instance sustained the defendant's special defense and absolved him from the complaint with the costs against the plaintiff, whereupon the latter appealed to this court.

We do not think that the court below erred in absolving the defendant from liability upon the second cause of action. It is not without significance that in her original complaint the plaintiff claimed only 5 plows, 6 carts, 3 carabaos and 4 vacunos, the total value of which was alleged to be P1,360; in the first amended complaint filed over two years later, the same claim was made, but in the last amended complaint a number of other articles were included, thus increasing the claim to P3,596. The court below found that the weight of the evidence showed that the missing draft animals died from rinderpest and that the other personal property was turned over to the provincial sheriff for delivery to the plaintiff before the writ of execution was returned to the court. If so, the action would lie against the sheriff rather than against the defendant.

As to the first cause of action the defendant argues that it was included in the prayer of an amended complaint filed in case G. R. No. 21706 and that, although no express determination thereof was made in the decision of the case, it must, nevertheless, be regarded as res adjudicata. That such is not the case is very clear. The Code of Civil Procedure says:

"That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto." (Sec. 307, Code of Civ. Proc.)

But the defendant maintains that the plaintiff having had an opportunity to ventilate the matter in the former case, she cannot now enforce the same cause of action in the present case. Properly speaking, this argument does not involve the doctrine of res adjudicata but rests on the well-known and, in American law, firmly established principle that a party will not be, permitted to split up a single cause of action and make it the basis for several suits. But that is not this case. The rule is well established that when a lease provides for the payment of the rent in separate instalments, each instalment is an independent cause of action, though it has been held, and is good law, that in an action upon such a lease for the recovery of rent, the instalments due at the time the action is brought must be included in the complaint and that failure to do so will constitute a bar to a subsequent action for the payment of that rent. The aforesaid action, G. R. No. 21706, was brought on August 23, 1922, the plaintiff demanding payment of the then due rent in addition to the rescission of the lease. On July 27, 1923, the plaintiff filed a motion for an amendment to paragraph 6 of the complaint adding to that paragraph the following sentence:

"Que tambien ha vencido ya el tercer año del arrendamiento de la finca en cuestion y que tampoco ha pagado el demandado el cañon correspondiente a dicho año."

The plaintiff also amended the prayer of the complaint by asking judgment for rent for years subsequent to 1922. The motion was granted, and the case came up for trial on July 30, 1923, and on September 8, 1923, the trial court rendered its decision giving judgment for rent up to and including the rent for the agricultural year ending in 1923. The lease did not provide for payment of rent in advance or at any definite time, and it appears plainly from the record that the rent for an agricultural year was not considered due until the end of the corresponding year. It follows that the rent for the agricultural year 1922-1924 had not become due at the time of the trial of the case and that consequently the trial court could not render judgment therefor. The action referred to is, therefore, no bar to the first cause of action in the present litigation.

The defendant places much weight upon the document of September 30, 1924, hereinbefore quoted. The document speaks for itself, and it will be readily seen that it is merely a receipt for the satisfaction of the money judgment in the case G. R. No. 21706 and has nothing to do with the present case.

The only question remaining in regard to the first cause of action relates to the amount of the damages. The plaintiff contends that the defendant was a possessor in bad faith, and therefore, must pay the value of the fruits of the land in accordance with article 455 of the Civil Code. Under the circumstances of the case, we cannot so hold. The defendant held possession under the contract of lease until said contract was rescinded. The contract contained no special provision for the procedure in effecting the rescission, and it follows that it could only be accomplished by a final judgment of the court. The judgment in case G. R. No. 21706 did not become final until March 27, 1924, when our decision on appeal was rendered. As that must have been close to the end of the harvest and milling of the sugar crop for the period to which the first cause of action refers, we do not think that the defendant should be required to pay more than the amount of the stipulated rent for that period, i. e., the sum of P8,000 with interest. (*Lerma vs. De la Cruz*, 7 Phil., 581.)

The action for terminating the lease was brought under article 1124 of the Civil Code, and it may, perhaps, be said

that properly speaking, the subject matter of the action was a resolution of the contract and not a rescission. That may be true, but it is a distinction without a difference; in either case a judicial declaration would be necessary for the cancellation of the contract in the absence of a special agreement.

Very little need be said in regard to the third cause of action. It relates to a period subsequent to the complete termination of the lease by final judicial order. The defendant had then no right whatever to the possession of the land or to the fruits thereof, and in removing the fruits, he acted in bad faith. This being the case, he must pay for the fruits received by him, less the necessary expenses of production. (Arts. 455 and 453 of the Civil Code.) As his bad faith commenced long before the fruits in question were produced, he is not entitled to any part of the net proceeds of the crop. The evidence shows that the net ratoon crop for the year 1924-1925 was 1,613.25 piculs of sugar, and according to the defendant's own statement, the market value of the sugar was in the neighborhood of P11 per picul and the cost of production about P4.50. The net result is that under the third cause of action, the defendant must pay to the plaintiff the sum of P10,486.13 with interest.

For the reasons stated, the judgment of the court below is affirmed in regard to the second cause of action. It is reversed as to the first and third causes of action, and it is hereby ordered that the plaintiff have and recover from the defendant the sum of P18,486.13 with interest at the rate of 6 per cent per annum from April 13, 1925, the date of the filing of the complaint. No costs will be allowed. So ordered.

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

[1] 45 Phil., 842.

ORDER AMENDING DECISION

December 10, 1928

OSTRAND, J.:

In a motion filed by the defendant on November 14, 1928, our attention is called to a mathematical error in that we, in discussing the plaintiff's third cause of action, failed to take into consideration the fact that one-half of the gross ratoon crop produced on the land in question in the agricultural year 1924-1925 was ceded to the sugar central as compensation for the milling of the cane and that the defendant paid the expenses of the production of the total or gross crop. Page 8 of the aforesaid decision is therefore amended so as to read as follows:

"Very little need be said in regard to the third cause of action. It relates to a period subsequent to the complete termination of the lease by final judicial order. The defendant had then no right whatever to the possession of the land or to the fruits thereof, and in removing the fruits, he acted in bad faith. This being the case, he must pay for the fruits received by him, less the necessary expenses of production. (Arts. 455 and 453 of the Civil Code.) As his bad faith commenced long before the fruits in question were produced, he is not entitled to any part of the net proceeds of the crop. The evidence shows that the gross ratoon crop for the year 1924-1925 was 3,226.50 piculs of sugar, and according to the defendant's own statement, the market value of the sugar was in the neighborhood of P11 per picul and (the cost of production about P4.50. The defendant received only one-half of the gross crop, the other half going to the sugar central as compensation for the milling of the cane, but the defendant paid the cost of production both of his share of the sugar and that of the sugar central. The net result is that under the third cause of action, the defendant must pay to the plaintiff the sum of P3,226.50 with interest.

"For the reasons stated, the judgment of the court below is affirmed in regard to the second cause of action. It

is reversed as to the first and third causes of action, and it is hereby ordered that the plaintiff have and recover from the defendant the sum of P11,226.50 with interest at the rate of 6 per cent per annum from April 13, 1925, the date of the filing of the complaint. No costs will be allowed." So ordered.

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

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