

TOMASA C. VIUDA DE PAMINTUAN, PLAINTIFF AND APPELLANT, VS. JUAN TIGLAO, DEFENDANT AND APPELLANT.*G.R. No. 29292. March 13, 1929*

Ponente: OSTRAND, J.

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This action was instituted in the court of the justice of the peace of Mabalacat, Pampanga, by Tomasa C. Vda. de Pamintuan, as guardian of her five minor children, bearing the surname of Pamintuan y Centeno, for the purpose of recovering from Juan Tiglao the possession of two parcels of land described in the complaint, as well as a quantity of palay and sugar, as rent, together with damages and an attorney's fee, and costs. In said court the cause was decided favorably to the plaintiff, whereupon the defendant appealed to the Court of First Instance. In the latter court the defendant challenged the jurisdiction of the court and set up various counterclaims not necessary to be here specified.

Upon the trial of the cause in the Court of First Instance judgment was again rendered in favor of the plaintiff for the possession of the land in question and requiring the defendant to pay to the plaintiff, as rent for the agricultural year 1925-1926, three hundred cavans of palay (Pinilngbeltu), or in default thereof, its equivalent in money at the rate of P3.75 per cavan, as well as four hundred piculs of sugar; and as rent for the agricultural year 1926-1927, another three hundred cavans of palay, or in default thereof, its equivalent value in money at the same rate per cavan, with interest on all of said sums from April 10, 1926. From this judgment both the plaintiff and the defendant appealed: the plaintiff appealing with respect to so much of the judgment as failed to award the stipulated attorney's fee of P1,000 and stipulated interest at the rate of 15 per cent per annum upon the unpaid rents; the defendant appealing from the court's refusal to dismiss the cause for lack of jurisdiction, as well as from the failure of the court to allow to the defendant his own attorney's fee.

It appears that on March 18, 1925, one Jose V. Ramirez, as attorney-in-fact of Florentino Pamintuan, entered into a written contract with the defendant herein, Juan Tiglao, whereby the former leased to the latter the two parcels of land described in the plaintiff's complaint, located in the barrio of Dolores, municipality of Mabalacat, Province of Pampanga. The term of this lease was fixed at two agricultural years, beginning with the month of April, 1925, and continuing through March, 1927.

In the fourth paragraph of this contract the annual rent due upon the lease was fixed at three hundred cavans of palay and four hundred piculs of sugar, of defined quality, and deliverable on or before the last day of March, marking the end of the two respective years covered by the lease. The rent for the first year not having been paid on or before March 31, 1926, nor thereafter, this action was instituted, on September 10, 1926, after proper demand made, for the purposes indicated in the first paragraph of this opinion.

Logically speaking, the first question that presents itself upon this record is whether the court of a justice of the peace has jurisdiction to entertain an action of detainer, at the instance of the landlord, upon failure of the tenant to pay rent at the time and in the manner stipulated; and consequently whether this action, which was instituted

prior to the termination of the full period fixed by the lease, can be considered premature. Upon this point, it may be recalled, as rudimentary in the law governing leases of rural and Urban property, that it is the duty of the lessee to pay the price of the lease in the manner agreed upon (art. 1555, Civ. Code). Furthermore, the failure on the part of the lessee to comply with this obligation supplies a ground for the rescission of the contract and the recovery of damages by the lessor (art. 1556, Civ. Code). Again, in section 80 of the Code of Civil Procedure, it is in effect, among other things, declared that any landlord against whom the possession of any land is unlawfully, withheld after the determination of the right to hold possession shall, at any time within one year after the commencement of such unlawful withholding of possession, be entitled, as against the person so depriving him of possession, to restitution of the land, together with damages and costs. From these provisions it is clear that, upon non-payment of rent by the lessee, the lessor may elect to treat the contract as rescinded and thereby determine the right of the lessee to continue in possession; and this right to recover possession may be enforced in an action of unlawful detainer. It is not necessary, in such situation, that an independent action for the rescission of the lease should first be instituted, in the Court of First Instance, for the purpose of putting an end to the right of the tenant to remain in possession under the lease. Indeed, the proviso to the section of the Code of Civil Procedure last above cited, gives express recognition to the right of the landlord to recover possession in an ordinary action of detainer, for non-payment of rent by the lessee, the condition being that non-payment of the rent must have continued for the period of at least three days after demand duly made.

It appears from the record that after this action was begun, and before the case was decided? the defendant voluntarily surrendered possession of the land to the plaintiff. Upon this it is contended by the attorney for the defendant that the court of the justice of the peace—and consequently the Court of First Instance—lost jurisdiction to entertain the action. This contention is of course untenable. The jurisdiction of the court having once attached, that jurisdiction continues until the complete remedy is granted. The defendant-appellant further contends that, inasmuch as he set up a counterclaim for damages in the amount of P6,000, the jurisdiction of the court of the justice of the peace over the main action was destroyed, But this proposition also is untenable.

What has been said disposes of the main points raised in the appeal of the defendant. With respect to the plaintiff's appeal, we note, first, a provision in the contract of lease to the effect that if the stipulated rent should not be paid at the times stated, the lessee must indemnify the lessor in an additional amount equivalent to 15 per centum annually, or 1.25 per cent for each month of delay, to be calculated upon the highest quotation registered in the market, for the commodity which should have been" paid, within the sixty days following the due date of such rent. The trial court refused to give effect to this stipulation on the ground that, in effect, it was a stipulation for the payment of usurious interest. In this connection it will be recalled that at the time the contract in question was made, the highest rate that could be legally collected upon any unsecured loan or forbearance of money, goods, or credits, was 14 per centum per annum. In view of this provision, we are of the opinion that the trial court committed no error in refusing to allow the interest thus stipulated for. In dealing with situations of this kind it is the duty of the court to look through the form and into the substance of the transaction, and we are of the opinion that this stipulation really contemplated interest, as interest, and that the stipulation did not contemplate what may be called liquidated damages, as contended by the plaintiff-appellant.

The second point involved in the plaintiff's appeal has reference to the refusal of the trial court to allow an attorney's fee. In paragraph 11 of the contract, it is stipulated that in case of litigation for non-compliance with the lease, the lessee shall pay to the lessor the sum of M,000 for his attorney's fee and other expenses. The justice of the peace, before whom the case was brought, refused to take cognizance of this item on the ground that the sum exceeded the amount over which he could take jurisdiction. Upon appeal, the Court of First Instance held that as it was only exercising its appellate jurisdiction, it could not take cognizance of matters beyond the jurisdiction of the justice of the peace court.

In our opinion, the views of the two lower courts are correct. A justice of the peace court is of limited jurisdiction, and the limits are fully and clearly denned in the statutes. This is an action for forcible entry and detainer and, as such, can only involve the "restitution of the land, building, and premises possession of which is unlawfully withheld, together with damages and costs" (See sec. 80, Code of Civil Procedure). Damages do not include attorney's fees; whatever doubt there may be on that point should be dispelled by section 84 of the same Code, which reads as follows:

"If, upon trial, the court shall find that the complaint is not true, it shall enter judgment against the plaintiff for costs. If it finds the complaint to be true, it shall render judgment against the defendant in favor of the plaintiff for restitution of the premises, and costs of suit, and for all arrears of rent, or a reasonable compensation for the use and occupation of the premises." (*Italics supplied.*)

The costs referred to are fixed by section 491 of the Code and do not include attorney's fees.

In conclusion we "note that the defendant supposes that he is entitled to recover his own attorney's fee under section 7 of the Usury Law (Act No. 2655), in view of the usurious character of the stipulation for the payment of 15 per cent interest to the lessor upon overdue rents. This suggestion is untenable, since the right to the attorney's fee under the section referred to attaches only when usurious interest has been in fact paid. The circumstance that usurious interest is stipulated for does not entitle the borrower to an attorney's 'fee in an action declaring¹ the stipulation usurious.

The judgment appealed from is in accordance with the law and the facts and is affirmed without costs. So ordered.

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

DISSENTING:

STREET, J.:

Though concurring in the main, I am unable to subscribe to so much of this decision as fails to concede to the plaintiff a reasonable allowance, within the limits of one thousand pesos, for attorney's fees and other expenses. The lease contains a special stipulation to the effect that in case litigation shall result from non-compliance with the contract upon part of the lessee, the latter will pay the sum of one thousand pesos for attorney's fees and other expenses. Stipulations of this kind have heretofore been uniformly respected by this court, though it does not hold itself bound to allow the whole amount stipulated for. The justice of the peace and the Judge of First Instance, in denying this fee, proceeded on the theory that the one thousand pesos mentioned in the stipulation was in excess of the maximum amount over which the court of a justice of the peace has jurisdiction, and for this reason they disallowed any fee. The reasoning contained in the opinion written by Justice Ostrand for this court denies the right of the litigant to recover any attorney's fee at all, regardless of the amount stipulated for. In this view no recovery could ever be had of an attorney's fee, though expressly stipulated for, in an action of unlawful detainer. I consider both points of view to be incorrect.

It is to be admitted of course that when an attorney's fee is not expressly stipulated for, it cannot be allowed as costs, expenses, disbursements, or as damages, but where there is a stipulation to pay a certain amount as attorney's fee in case litigation results from breach of contract, a reasonable fee can be allowed, not in excess of the amount agreed upon; and of course it must be allowed in the character of damages. In the innumerable instances where stipulations of this kind have been enforced, the liability arises from breach of the contract, and there is no other conception than damages under which it can be imagined that the fee is allowable.

The jurisdiction of the court of justice of the peace in civil actions is defined in section 68 of Act No. 136, where it is in substance declared among other things that the court of the justice of the peace shall have original jurisdiction in forcible entry and detainer proceedings, whether the subject of litigation is or is not capable of pecuniary estimation, under this general provision the court of a justice of the peace, having jurisdiction to determine the right of possession, may award damages in any amount in connection with the determination of the right of possession. And this power is not restricted by anything contained in section 84 of the Code of Civil Procedure. The evident purpose of that provision is to describe the ordinary incidents of the liability of the defendant with respect to the unlawful detention. No attempt is there made to give any exhaustive statement of all the relief procurable in such an action; while section 80 expressly provides for the award of damages.

In the case before us the rights of the litigant parties were defined in the contract of lease, and the right of the lessor to recover the possession of the premises had its origin in a breach of this contract by the lessee. Moreover, the right of the plaintiff to recover a reasonable attorney's fee under the stipulation mentioned arose from the institution of litigation as a result of the same breach of contract on the part of the defendant; and inasmuch as the right to the fee is an inseparable incident from the plaintiff's right to possession, he is entitled to recover the fee as a part of the damage resulting from the breach.

It is a recognized rule that, generally speaking, liability under a contract is not divisible and, if the plaintiff cannot recover the fee in the action which he is forced to bring to recover possession, he cannot recover it in any court. Necessarily the result of the present decision is to make an outlaw of a stipulation for attorney's fee in a contract of lease, in all cases where the plaintiff finds it necessary to have recourse to a court of the justice of the peace to recover possession of the leased premises. I cannot see either the justice or the propriety of putting such a stipulation under the ban.

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