

FERMIN SUPIA AND GAVINA BATIOCO, PETITIONERS, VS. JOSE M. QUINTERO, JUDGE OF FIRST INSTANCE OF TAYABAS, AND JUAN L. AYALA, RESPONDENTS.

G.R. No. 37452. December 23, 1933

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition for a writ of certiorari to annul the proceedings had in civil case No. 3206 of the Court of First Instance of Tayabas, entitled Juan L. Ayala, plaintiff, vs. Fermin Supia and Gavina Batioco, defendants. The facts are not in dispute. The only question presented is one of law, and may be stated in a general way as follows: In an action of forcible entry and detainer, will the mere filing of an answer, claiming title to the premises involved, divest a justice of the peace of jurisdiction?

The action of forcible entry and detainer is of statutory origin. In the United States, the general purpose of the statutes creating the action is "that, regardless of the actual condition of the title to the property, the party in peaceable and quiet possession shall not be turned out by strong hand, violence or terror. One who is guilty of a forcible entry, therefore, or of a forcible detainer after a peaceable but unlawful entry, is not only subject to indictment, but is required to restore possession to the party from whom it was so taken or detained, and in a proper case is often required to pay him treble damages, notwithstanding the fact that the entrant may have had the superior title or the better right to present possession. In affording this remedy of restitution the object of the statutes is to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims. This is the philosophy at the foundation of all these actions of forcible entry and detainer which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his." (11 R. C. L., 1137, 1138.)

In *Chisholm vs. Weise* (5 Okla., 217, 220; 47 Pac., 1086, 1087), the court said: "The general purpose of the statute does not regard the actual condition of the title of the property, but, where any person is in the peaceable and quiet possession of it, he shall not be turned out by force, by violence, or by terror. The party so using force and acquiring possession may have a superior title, or may have the better right to the present possession; but the policy of the law is to prevent disturbances of the public peace, and to forbid any person righting himself by his own hands and by violence, and requiring that the party who has obtained possession in this manner shall restore it to the party from whom it has been so obtained. The party out of possession must resort to legal means to obtain possession if he be entitled thereto."

In this jurisdiction the applicable provisions of law are section 80 of the Code of Civil Procedure and section 68 of Act No. 136, as amended. Section 80 of the Code of Civil Procedure provides:

"Anyone deprived of the possession of any land or building by force, intimidation, threat, strategy or stealth,

and any landlord, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or determination of the right to hold possession, by virtue of any contract, express or implied, and the legal representatives or assigns of any such landlord, vendor, vendee, or other person, shall at any time within one year after such unlawful deprivation or withholding of possession be entitled, as against the person or persons unlawfully withholding or depriving of possession, or against any person or persons claiming under them, to restitution of the land, building, and premises possession of which is unlawfully withheld, together with damages and costs: Provided, however, That no landlord shall commence any action against a tenant for restitution of possession of any land or building for failure to pay rent or to comply with the conditions of his lease, unless the tenant shall have failed, for a period of three days, to pay the rent due or comply with the conditions of his lease after demand therefor. The demand for payment or for the performance of any condition of the lease may be made upon the tenant personally, or by serving written notice of such demand upon any person who may be found upon the premises, or by posting such notice on the premises, if neither the tenant nor any other person can be found thereon at the time the landlord or his agent may have gone there for the purpose of making such demand."

And the pertinent part of section 68 of Act No. 136, as amended by Act No. 3881, reads as follows:

"In forcible entry and detainer proceedings the justice shall have original jurisdiction, but he may receive evidence upon the question of title therein solely for the purpose of determining the character and extent of possession and damages for detention."

From the statutory provisions above-quoted, it can be seen that the scope of the action of forcible entry and detainer has been materially enlarged in this jurisdiction. It covers three classes of cases. The action may be brought by (1) anyone deprived of the possession of any land or building by force, intimidation, threat, strategy or stealth; (2) any landlord, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or determination of the right to hold possession, by virtue of any contract, express or implied; and (3) the legal representatives or assigns of any such landlord, vendor, vendee, or any other person.

In the case at bar, the action was originally brought before the justice of the peace of Pagbilao, Tayabas, by the respondent Juan L. Ayala against the petitioners Fermin Supia and Gavina Batioco. The complaint alleged that the defendants below, now petitioners herein, had sold to the plaintiff, the respondent herein, certain real property with right to repurchase the same within one year from January 2, 1931; that it was agreed that during the said period of one year, the defendants would occupy said premises as tenants of the plaintiff; that upon the expiration of said period of one year, the defendants failed to exercise their right to repurchase the property and, consequently, the agreement of lease was terminated; that notwithstanding the termination of the lease, the defendants held over and unlawfully withheld the possession of the property from the plaintiff. To this complaint the defendants filed an answer, in which they claimed that the alleged contract of sale with right to repurchase was not, in fact, a sale but a mortgage.

The petitioners now contend that the filing of this answer deprived the justice of the peace of Pagbilao, Tayabas, of jurisdiction to try the case. In support of their contention petitioners cite the cases of *Falcon and Falcon vs. Barretto* (26 Phil., 72), and *Tiempo vs. Viuda e Hijos de Reyera* (27 Phil., 33). On the other hand, the respondents maintain that the justice of the peace of Pagbilao had original jurisdiction to try the case, and that the mere filing of the answer, in which the question of title is raised, did not divest the justice of the peace of jurisdiction. Respondents rely principally on the cases of *Mediran vs. Villanueva* (37 Phil., 752); *Alderete vs. Amandoron and Angosto* (46 Phil., 488); and *Gonzalez and Javellana vs. Salas* (49 Phil., 1). It, therefore, becomes necessary to review some of the cases already decided.

In *Falcon and Falcon vs. Barretto*, supra, it was held "that, in enacting section 80, it was the intention of the

Legislature to give the justice of the peace jurisdiction of actions of unlawful detainer based upon sales only in those cases where the sale is admitted and the ownership cannot, therefore, in the nature of things, be disputed. This is necessarily so, for, if the sale itself is disputed—that is, if an attempt is made to take from the parties the quality and relation of vendor and vendee—there is presented instantly the question of ownership; and the right to possession resting wholly upon the fact of sale, such right must wait and be dependent upon the determination of that question. Whether there was really a sale or not and whether the parties take on the qualities of vendor and vendee are matters which go to the very essence of title. But when the question of title necessarily arises the justice's court loses jurisdiction. It is, therefore, apparent that the cases included within the definition of the sale specified in section 80 are only those in which the question of whether or not there was a sale, that is to say, as to who owns the property, cannot arise. This is true as to the other cases described in "section 80. No question of title can arise where possession has been obtained by force, intimidation, threat, strategy or stealth, or where there is a lease. There is not a case mentioned in section 80 in which the title to the property can come in question. If it does arise and its determination is necessary for a resolution of the cause, then instantly the case is taken from the domain of section 80 and the justice's court loses jurisdiction. Perhaps it were better said, and more nearly correctly, that the case was never within the section." The rule, laid down in this case was followed in *Tiempo vs. Viuda e Hijos de Reyes*, supra.

In *See Kiong Pha vs. Ti Bun Lay* (45 Phil., 670), this court held: "In an action of forcible entry and detainer, when it is made to appear by the answer of the defendant that a real question of title and ownership of property is presented, the court of the justice of the peace has no jurisdiction to hear and determine the question presented. If the justice of the peace does take jurisdiction under such circumstances and an appeal is taken to the Court of First Instance, the latter has no jurisdiction to determine the question presented. An appeal from the judgment of the court which has no jurisdiction does not give the appellate court jurisdiction to try the cause."

In *Mediran vs. Villanueva*, supra, the court said: "Upon the second point it is clear that under the law now in force it' is beyond the jurisdiction of a justice of the peace to adjudicate in any case upon the question of the title of real property, or to declare that one person rather than another is the owner. But it does not result from this that when an action of forcible entry and detainer is instituted to recover possession the defendant can defeat the proceeding merely by asserting ownership in himself. Though the jurisdiction to determine the question of ownership is vested exclusively in the superior court, the inferior court of the justice of the peace possesses full power to determine the right of possession and assess the damages incident to the unlawful detention. To this end it may consider the evidence of ownership."

And in *Alderete vs. Amandoron and Angosto*, supra, the court, commenting on the decision in *Falcon and Falcon vs. Barretto*, supra, observed: "Upon the facts so stated there can be no question that the conclusions of the court were entirely correct; the case clearly involved questions of ownership over which the justice of the peace had no jurisdiction. But unfortunately, the decision contains certain dicta from which the inference has been drawn that under no circumstances can a vendee under a pacto de retro sale, maintain an action of forcible entry and detainer against the vendor for the possession of the land sold.

"This view is clearly erroneous. A sale with pacto de retro transfers the legal title to the vendee and this, in the absence of an agreement to the contrary, carries with it the right of possession. In the case of *Santos vs. Heirs of Crisostomo and Tiongson* (41 Phil., 342), this court, in discussing the nature of sale with pacto de retro, said: '* * * It is our opinion, however, that the insertion of a stipulation for repurchase by the vendor in a contract of sale does not necessarily create any right inconsistent with the right of ownership in the purchaser. Such a stipulation is in the nature of an option, and the possible exercise of it rests upon contingency. It creates no subsisting right whatever in the property, and so far from being inconsistent with the idea of full ownership in the purchaser, it really rests upon the assumption of ownership in him. * * *'

The doctrine enunciated in this case was followed in *Gonzalez and Javellana vs. Salas*, *supra*.

In *Sevilla vs. Tolentino* (51 Phil., 333, 335, 336), Chief Justice Avanceña, speaking for the court, said: "We should not lose sight of the fact that the action for forcible entry and detainer established by section 80 of the Code of Civil Procedure, which establishes a summary proceeding therefor, is for the purpose of providing an expeditious means of protecting actual possession which is presumed to be lawful, until the contrary is proven, from any disturbance implying a contrary presumption. This is why justice of the peace courts have been given jurisdiction to entertain such action, said courts being more accessible and in a position to afford the promptest remedy through a simple procedure. It may be that the possessor is not the owner and is not entitled to the possession, but, in order to decide this, the law provides remedies other than this summary proceeding, whose sole object is to protect, for the moment, the disturbed actual possession. If this were not so, there could have been no reason for the institution of this summary proceeding, because the ordinary action for the recovery of real property also includes the remedy for the possession. These considerations are applicable to the case of a lessee, who as such, possesses the thing with the consent and in representation of the lessor, when against the latter's will, he continues in possession after the expiration of his right of possession acquired by contract, and this is why the law has extended this remedy against him, considering him as much of an intruder as he who has acquired possession by force, intimidation, threat, strategy, or stealth.

"If these are the purposes of the summary proceeding of forcible entry and detainer, the legal provision (sec. 3, Act No. 1627), which makes an exception of the case involving the question of ownership, must be strictly interpreted, and this exception is to be applied only to such cases as involve the question of ownership so necessarily that it would be impossible to decide the question of mere possession without first settling that of ownership. It is plain that it is not to be applied simply because the defendant raises the question of ownership, so long as such a question is not necessarily involved, since it can be said that the defendant can always do so. The relief has been provided in favor of the possessor and not of the intruder. It is the possessor who should be allowed to decide whether or not he is to avail himself of such relief, and once he has decided to do so, the intruder should not be left with an instrument in his power by means of which he can thwart it, nor should the efficacy of the relief granted precisely against him be made to depend upon his will. The decision of this court in the case of *Mediran vs. Villanueva* (37 Phil., 752), abounds in weighty considerations to this effect."

It will be perceived that the real controversy between the parties in this case centers around an apparent conflict between two lines of decisions of this court on the subject of the jurisdiction of a justice of the peace in actions of forcible entry and detainer. Experience has shown the necessity for laying down a clear and, as far as possible, definite rule on the question, in order to avoid further confusion and unnecessary litigation. After a careful consideration of the whole question in the light of pertinent authorities, we have come to the conclusion that (1) the purchaser under a contract of sale with right to repurchase, is a vendee within the meaning of section 80 of the Code of Civil Procedure, and (2) in an action of forcible entry and detainer, the mere filing of an answer, claiming title to the premises involved or raising the question of ownership, will not divest a justice of the peace of jurisdiction.

We believe that the conclusion thus reached is in harmony with sound principles of law and jurisprudence. As stated by the court in *Pettit vs. Black* (13 Neb., 142, 154), "the answer is a mere statement of the facts which the party filing it expects to prove, but it is not evidence. If, however, on the trial it should appear that the action is not in fact for the recovery of the possession of the premises, but to determine a question of title, the court will have no authority to proceed, and the case must be dismissed. In other words, where the question to be determined is one of title, it will oust the court of jurisdiction. But the court has authority to proceed with the hearing of the cause until this fact is clearly established."

In *Green vs. Morse* (57 Neb., 391; 73 Am. St. Rep., 518), the court held that jurisdiction of forcible entry and

detainer proceedings is not ousted by a mere averment in an answer that such proceedings involve the question of title. In the course of its opinion, the court said: "Nor were the forcible entry and detainer proceedings without jurisdiction because of the averment in the supplemental petition here that they would require an inquiry into the title of land. Even an answer to that effect in the forcible entry suit would not oust the jurisdiction. The court might still proceed until the evidence should disclose that the question involved was one of title. (*Pettit vs. Black*, 13 Neb., 142; *Lipp vs. Hunt*, 25 Neb., 91.)" To the same effect are *Brown vs. Hartshorn* (12 Okla., 121; 69 Pac., 1049); and *Hackney vs. McKee* (12 Okla., 401; 75 Pac, 535).

Our statute clearly contemplates that the mere fact that the question of title is raised in the answer, should not oust a justice of the peace of jurisdiction; and so it provides that "he may receive evidence upon the question of title therein solely for the purpose of determining the character and extent of possession and damages for detention." (Section 68 of Act No. 136, as amended by Act No. 3881.)

It results that the petition for a writ of certiorari should be denied, with costs against the petitioners. So ordered.

Avanceña, C. J., Street, Malcolm, Hull, Vickers, Imperial, and Butte, JJ., concur.

DISSENTING

VILLA-REAL, J.:

The present case is on all fours with the case of *Mendoza vs. Arellano and B. de Arellano* (36 Phil., 59).

In that case as in this case the purpose of the action was the ejectment by an alleged lessor, who was at the same time an alleged pacto de retro vendee, of an alleged lessee who was at the same time the alleged pacto de retro vendor, from the land alleged to have been sold with pacto de retro; and the defense in that case as in the present one was that the defendant was in fact and in truth not a lessee but a mortgagor paying a usurious interest in the guise of rent; that the contract, while in the form of a pacto de retro sale, was in reality of mortgage; and that the said defendant was the owner of the land in question.

In said case, in which the case of *Falcon and Falcon vs. Barretto* (26 Phil., 72), was cited, this court laid down the following doctrine:

"Where the real issue raised by defendant's pleadings in an action of this kind in a court of a justice of the peace is whether an alleged contract of sale with right to repurchase, including an alleged rental contract, is a valid contract, or a fictitious and simulated contract which does not set forth the real nature of the agreement entered into by the parties, a question of title is involved which necessitates the transfer of the record for trial in the Court of First Instance by certificate of the justice of the peace."

In the case of *Falcon and Falcon vs. Barretto*, *supra*, this court said:

"This is a typical case of a sale with right to repurchase as they come to this court, and the typical questions presented in such case are raised herein. It is claimed by the vendor that the instrument is a mortgage and not a sale with a right to repurchase; that she has paid the amount of the indebtedness within the time required by the terms of the document, and that she is therefore the owner of the premises and entitled, by virtue of such ownership, to retain possession thereof. The vendees, on the other hand, assert that the instrument is not a mortgage but a sale with a right to repurchase; that the time stipulated in the instrument within which payment must be made has expired and that no such payment has been made or tendered; that by virtue of that fact they have become absolute and sole owners of the premises, and, by virtue of such ownership, are entitled to the

immediate possession thereof. It is, therefore, clear that the question to be determined in this case is primarily the question of ownership, for upon ownership, pure and simple, depends the right to possession. It is equally clear that the justice's court, therefore, had no jurisdiction of the subject matter of the action and that, as a necessary consequence, the Court of First Instance on appeal had no jurisdiction further than to set aside and annul the judgment entered in the justice's court."

The above-cited doctrines are also cited in 35 Corpus Juris, page 505, sec. 70, alongside with the decisions of the supreme courts of many states of the Union in support of the following statement: "* * * But in other states the title may be involved, and where it does actually come into question, the jurisdiction of a justice is ousted. * * *"

Commenting upon the above doctrine, this court, in a decision penned by Justice Ostrand in the case of Alderete vs. Amandoron and Angosto (46 Phil., 488, 491), said:

"There are, of course, many cases involving alleged sales with pacto de retro in which questions of ownership arise and of which the Courts of First Instance have original jurisdiction. Of this class Falcon and Falcon vs. Barretto, supra, offers a good example. But there are also cases where the fact that the transaction is a true sale with pacto de retro is not disputed, and in such cases there can be no reason Why actions of forcible entry and detainer may not be taken cognizance of by the justice of the peace if brought within the time limit prescribed by law. The matter depends entirely upon the circumstances of each particular case. * * *"

In the case just mentioned this court establishes a distinction between a pacto de retro sale which is not disputed and a pacto de retro sale which is disputed. As to the first. the doctrine laid down in Falcon and Falcon vs. Barretto, supra, is held to be correct, but not as to the second. The present case falls under the Falcon doctrine, inasmuch as the pacto de retro sale is disputed in the answer.

In the case of See Kiong Pha vs. Ti Bun Lay (45 Phil., 670), this court laid down the following rule:

"COURT OF THE JUSTICE OF THE PEACE; JURISDICTION.—In an action of forcible entry and detainer, when it is made to appear by the answer of the defendant that a real question of title and ownership of property is presented, the court of the justice of the peace has no jurisdiction to hear and determine the question presented. If the justice of the peace does take jurisdiction under such circumstances and an appeal is taken to the Court of First Instance, the latter has no jurisdiction to determine the question presented. An appeal from the judgment of the court which has no jurisdiction does not give the appellate court jurisdiction to try the cause."

The only ground on which the majority of the court seems to rely in reversing the above-cited doctrines and in laying down the rules that "(1) the purchaser under a contract of sale with right to repurchase, is a vendee within the meaning of section 80 of the Code of Civil Procedure; and (2) in an action of forcible entry and detainer, the mere filing of an answer, claiming title to the premises involved or raising the question of ownership, will not divest a justice of the peace of jurisdiction," is the provision of section 68 of Act No. 136, as amended by Act No. 3881, which reads as follows: "In forcible entry and detainer proceedings the justice shall have original jurisdiction, but he may receive evidence upon the question of title therein solely for the purpose of determining the character and extent of possession and damages for detention."

It will be seen that the above-quoted provision refers to forcible entry and detainer and not to ejectment or recovery of possession proceedings, and it does not prohibit the setting up of a special plea of title or ownership in the answer. The majority opinion admits, however, that such special defense may be pleaded, but that the justice of the peace may not act on it; he must proceed to trial. If in the course of such trial he discovers that a real question of title or ownership is involved, it is only then that he should inhibit himself from taking cognizance of the case for lack of jurisdiction and dismiss it. This is, however, contrary to the rule laid down in most jurisdictions in the United States as stated in 35 Corpus Juris, page 508, sec. 72, as follows:

"* * * In most jurisdictions, if defendant in a justice's court wishes to raise the question of title to land, he must set up the defense specially in his plea or answer, or give notice that title will come in question. * * *"

Section 68 of Act No. 136, as amended by Act No. 3881, in permitting the reception of evidence upon the question of title does so solely for the purpose of determining the character and extent of possession and damages for detention in forcible entry and detainer proceedings, and it does not say that it is only then that the justice of the peace should determine whether or not a real question is involved as specially pleaded in the answer. Thus, instead of saving the defendant the trouble and expense of going into trial when question of title or ownership is specially pleaded, the majority compels him to undergo such trouble and expense and to show in the trial that his special defense is meritorious. In proceedings of recovery of possession after expiration of a lease, it has been held that "where the tenancy has terminated or the facts show a bona fide claim of title by defendant under circumstances not involving a denial by a tenant of his landlord's title, the justice loses jurisdiction, * * *." (35 Corpus Juris, page 507, sec. 70.) It will thus be seen that the doctrine laid down in this jurisdiction in the cases cited above is more conducive to speedy justice and less expensive to litigants than the new rule that the majority lays down in its opinion.

For the foregoing reasons, I am of the opinion that the writ should be granted.

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