

CATALINA BERNARDO, PLAINTIFF AND APPELLEE, RS. VICENTE GENATO, DEFENDANT AND APPELLANT.

G.R. No. 4051. March 18, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

On the 24th of August, 1906, an amended complaint was filed by Catalina Bernardo with the court of the justice of the peace of Manila, praying that Vicente Genato be ordered to vacate the house and lot situated at 120 Calle Peñafrancia, district of Paco, which he occupied, and that she (the plaintiff) be placed in possession thereof.

The defendant offered a general denial to the complaint, and as a counterclaim asked that the plaintiff be ordered to pay him the sum of P1,020 for necessary improvements made at the defendant's expense on both the house and lot. He also asked that a decision be rendered with regard to the right of accession resulting from certain plantings made by him on the land to the value of P300, in order that either the plaintiff should pay the value thereof, or the defendant the value of the land.

On the 24th of September of the same year, the justice of the peace entered judgment, ordering the eviction and that the plaintiff be placed in possession of the property as asked for in the complaint. As to the counterclaim the justice held that it was not in conformity with the law, inasmuch as it had not been shown that authority had been obtained from the plaintiff to carry out the alleged improvements; that the court was without jurisdiction by reason of the amount claimed and for the further reason that the action brought referred to real estate.

The defendant appealed to the Court of First Instance whereupon the plaintiff presented a complaint, an amendment thereof, and a further amendment after the amended complaint had been answered, in which last, in addition to the principal request, that is, that the defendant be evicted from the property, she demanded the payment of certain sums of money; firstly, on account of rent at the rate of P80 per month from the month of February, 1905, to the date of the decision, and secondly, as losses and damages to the extent of P900.

In his answer the defendant asserted his right to retain the property because of the improvements made upon it, and further demanded, in his counterclaim, the value of such improvements which are now made to amount to P2,020 (or P2,820 according to his written complaint) in addition to P500 for losses and damages occasioned through disregard of his right of accession by virtue of the plantings.

At the trial a great number of witnesses testified, in connection with the above questions set up in the complaint and counterclaim in the second instance. The court below considered that this evidence was immaterial; that the claims and counterclaims could not be sustained, in view of the established doctrine that a cause of action brought in the first instance can not be altered on appeal to the second instance. (*Alonso vs. Municipality of Placer*, 5 Phil. Rep., 71; *Enriquez vs. Watson & Co.*, 6 Phil. Rep., 114.)

As to the main question, the judgment appealed from was affirmed with costs.

The defendant duly excepted to the above decision and moved for a new trial which motion was overruled; he

further excepted to this ruling.

The bill of exceptions was forwarded to this court, but the judgment has been executed and the plaintiff placed a possession of the property.

The appeal was heard, and the following errors assigned in the writ were considered:

1. That the counterclaim presented by the defendant was not considered.
2. That the good faith of the defendant was not considered.
3. That the bad faith of the plaintiff was not taken into account,
4. That consideration was not given to the evidence bearing on the improvements made by the defendant.
5. That the fact that the total cost of the improvements amounted to P2,910 was also ignored.

The court a quo has not incurred in any of the alleged errors. In the first instance the defendant limited himself to a general denial of the facts set forth in the complaint.

If the conflict of rights by reason of the plantings made on the land of another, or the right of retention on account of what were considered as necessary improvements had been alleged, not in the form of an action by a mutual petition made by way of a counterclaim, but simply as a special defense in answer to the complaint, for the purpose of preventing the return of the possession claimed, and solely for that end, and not for the purpose of asking the refund of the expenditures, it would have been a proper defense, which, if proven, would have weakened the action taken by the plaintiff; but, as the defendant exercised his right by means of an action brought before the court of the justice of the peace, a counterclaim filed for the purpose of obtaining the payment or refund of a certain sum of money, and to the extent claimed, could not be sustained, it being matter entirely foreign to said jurisdiction.

This being true, it could not be the subject of an action in the first instance, nor in the second instance where nothing but the main question of eviction and restitution of possession could be considered. This is the basis of the decision of the court below. All the claims set up in the second instance, by both the plaintiff and the defendant, are entirely foreign to the appeal and could not properly be entertained.

The judgment appealed from being in accordance with the law, it is hereby affirmed with the costs of this instance. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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