

RUPERTO BELZUNCE, PLAINTIFF AND APPELLEE, VS. VALENTINA FERNANDEZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4155. March 20, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

By a complaint filed in the month of September, 1905, the plaintiff instituted ejectment proceedings against the defendants to oust the latter from the hacienda named "Anonolip," and to recover from him the sum of P1,723.22, the amount of rent due and unpaid.

The said complaint was filed with the court of the justice of the peace of Isabela, and judgment was entered dismissing the ejectment proceedings, but sentencing the defendants to pay to the plaintiff the rents due in the amount specified in the complaint. Both parties appealed from this judgment.

The court of the justice of the peace furthermore issued an order for the preliminary attachment of the carabaos and agricultural products of the defendants.

Upon the filing of a complaint with the Court of First Instance of Occidental Negros, similar to the former, the plaintiff prayed for the recovery of the possession of the said hacienda called "Anonolip," and the payment of the rents corresponding to 1904 and 1905, already due, and the rents which might accrue during the year 1906, together with the legal interest and the costs.

The defendants, by their answer, made a general denial of all the facts alleged and, by way of special defense, alleged that they had already paid the rent claimed, which constitutes the interest on a mortgage debt, and that, on the contrary, there remained a balance to their credit. In addition thereto, the defendants, by way of counterclaim, made a further claim for damages amounting to P15,000 resulting, on the one hand, from the preliminary attachment, and, on the other, from noncompliance, on the part of the plaintiff, with a contract under seal, dated July 15, 1905, according to the terms of which the latter bound himself to furnish the defendants the money necessary to cultivate the hacienda "Anonolip."

This hacienda had been sold by the defendants to the plaintiff on June 14, 1903, the right of repurchase was reserved to the former, and by the terms of the agreement in the form of a contract of lease said land was to be left in the possession of the vendors during the period allowed for the repurchase, conditioned upon the payment of rent, which was made the subject of the complaint in this case, because the rent was not paid during the years above mentioned.

After trial the Court of First Instance entered judgment as follows:

"The court finds that the deed of June 14, 1903, is a contract of sale with right of repurchase, and that the defendants, at the date of the filing of the complaint of ejectment in this case, had already paid the rents corresponding to 1904 and 1905.

"The judgment appealed from, in so far as it is not in conformity with this judgment, is reversed, and the

defendants are absolved without special ruling as to costs; The right is reserved to Ruperto Belzunce to bring the proper action to recover the rent for 1906 and the following years."

Both parties appealed from the above judgment, and both also petitioned for a rehearing. Some time after, however, the plaintiff withdrew his appeal and motion for rehearing, leaving only the appeal and motion for rehearing filed by the defendants, which gave rise to the bill of exceptions which was duly certified and filed with this court soon after exception was taken to the order denying the motion for rehearing.

The assignment of errors made in support of the appeal is as follows:

- The court erred "in finding that the deed of June 14, 1903, is not a mortgage, but a contract of sale with right of repurchase."
- The court erred "in finding that Valentina Fernandez is the only person who testified in regard to the deed of June 14, 1903, and in not mentioning in its judgment the acts of the plaintiff which corroborate the contention of the "defendants."
- The court erred "in finding that the defendants failed to explain why they did sign the deed of June 14, 1903, as executed."
- The court erred "in not finding against the plaintiff for the payment to the defendants of the damages resulting from the preliminary attachment, and in not reserving to them at least the right to bring an action against the plaintiff, in this case, for damages caused by the illegal preliminary attachment."

The subject-matter of the complaints, respectively, filed with both courts is the ejectment and the payment of rents.

The judgment appealed from does not sentence the defendants to be ejected from the land or to pay the rent. The purpose of the defendants in assigning the first three errors is therefore incomprehensible. Their allegation is evidently irrelevant and should not therefore occupy the attention of this court.

The fourth error is the only one that might serve as the basis for the bill of exceptions. Nevertheless, the Court of First Instance did not err in not finding against the plaintiff for the payment of damages resulting from the preliminary attachment issued by request of the latter, nor did the lower court commit error in not reserving to the defendants the right to bring a separate action for said damages :

First, because the nonreservation by judgment of the court of the right which one of the parties to an action deems he may exercise in a separate action is neither an error nor an injury, because the law does not impose upon the judge the duty of making a reservation of this kind in cases when the exercise of the right does not depend thereon.

Second, because the counterclaim for damages, filed for the first time on appeal before the Court of First Instance, not having been filed nor being proper in proceedings for ejectment in the court of the justice of the peace, it was reasonably denied, on account of its notorious impropriety, as has been determined in several decisions of the Supreme Court.

Third, because, according to section 439 of the Code of Civil Procedure, whose heading is "Disposition of attached property in case of judgment for defendant," in a case like this the property attached is delivered to the defendant and the order of attachment discharged, and the "defendant may have judgment against the plaintiff upon the obligation provided in section 427 for any damages he may have sustained by reason of the attachment, after summary hearing in the same action on due notice," if the attachment, according to section 427, "shall finally be adjudged to have been wrongful or without sufficient cause."

For the foregoing reasons, we affirm the judgment appealed from, with the costs of this instance against the appellants. So ordered.

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

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