

ALEJANDRO IBARRA, PLAINTIFF AND APPELLANT, VS. SEGUNDO AGUSTIN, DEFENDANT AND APPELLEE.*G.R. No. 44911. November 21, 1938*

Ponente: CONCEPCION, J.

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This case was originally commenced in the justice of the peace court of Camiling, Tarlac, wherein plaintiff, the present appellant, instituted an action for illegal detainer and damages against Segundo Agustin, alleging that he has become the owner (in his own words) of a certain parcel of land with the house and other improvements thereon, and that defendant has been occupying said house from July 5, 1934 as tenant, but has refused to leave the premises notwithstanding the fact that on the afternoon of March 8, 1936 he was required to do so, thereby causing plaintiff damages in the amount of P200. Defendant, by a motion, assailed the jurisdiction of the justice of the peace court on the following grounds: First, that the complaint was sworn before a notary public and not before the justice of the peace as required by law, which defect was jurisdictional in character; and second, that the deed of sale with right of repurchase of the land and house which are the subject matter of the litigation, was nothing more than an usurious loan. The justice of the peace court declared itself competent and with jurisdiction to take cognizance of and decide the case. It heard the case, and having found from the evidence that plaintiff is the owner of the land in question, it rendered judgment ordering plaintiff to leave the property in litigation, delivering possession of the same to plaintiff, and to pay the latter as rent per month the amount of P2, from March 8, 1935, the date of plaintiff's demand upon defendant to leave the house and land in question. Defendant appealed from said judgment to the Court of First Instance of Tarlac wherein, in his answer to the complaint, he raised the same question with respect to the right of ownership of the land and its improvements, alleging that the deed of sale with the right of repurchase of the land, house and improvements, which he had executed in favor of plaintiff was nothing but an usurious loan, and that the court did not have jurisdiction to take cognizance of and decide the case on appeal inasmuch as the justice of the peace court had no such jurisdiction.

It is necessary that we discuss the question raised by the defendant for the purpose of determining whether the Court of First Instance of Tarlac had or did not have appellate jurisdiction over the case.

Defendant's contention is supported by the provision of section 68 of Act No. 136, as amended by section 3 of Act No. 1627, in accordance with which, this court, in the case of *Mendoza vs. Arellano and B. de Arellano* (36 Phil., 59), reiterating the doctrine laid down in previous cases (*Falcon and Falcon vs. Barretto*, 26 Phil., 72, and *Tiempo vs. Viuda e Hijos de Reyes*, 27 Phil., 33), held that "when questions of title to real estate or an interest therein are raised by the pleadings in the court of a justice of the peace in an action of forcible entry and unlawful detainer, it is the duty of the justice of the peace to certify the record to the Court of First Instance for trial." However, after the aforecited section 68 of Act No. 136 was again amended by Act No. 3881 and under the doctrine enunciated in accordance with the latter law in the case of *Supia and Batioco vs. Quintero and Ayala* (59 Phil., 312), the justice of the peace court is not divested of jurisdiction to continue taking cognizance of a forcible entry and detainer case even when the question of ownership of the land or building in litigation is raised.

The justice of the peace court of Camiling and the Court of First Instance of Tarlac had, therefore, jurisdiction to take cognizance of and decide the present case notwithstanding the fact that defendant raised the question of title to the land and building, which are the subject matter of the litigation.

The evidence Adduced in the Court of First Instance of Tarlac showed, and the court so held, that the deed of sale with pacto de retro executed by defendant on July 5, 1984 in favor of plaintiff was simply a mortgage of the land to secure an usurious loan which was originally P200, but which, with a monthly interest of P33, amounted in a little less than two years to P850, the latter sum being made to appear as the price of the land and its improvements under the sale with pacto de retro for a period of eight months. The court also found from the evidence that, in spite of the execution pf the alleged sale with pacto de retro, defendant has never been a tenant of the land and its improvements and has continued in the possession of the same as owner.

Wherefore, the judgment dismissing the case is hereby affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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