

TEODORO M. BEECH, PLAINTIFF, VS. JUANA JIMENEZ, AND A. S. CROSSFIELD, JUDGE OF FIRST INSTANCE OF MANILA, DEFENDANTS.

G.R. No. 4690. December 10, 1908

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PER CURIAM:

At the sitting held on the 16th of November, 1908, this Supreme Court passed the following resolution:

"The court, considering the application for a writ of certiorari filed by Teodoro M. Beech against the Hon. A. S. Crossfield, judge of First Instance of the city of Manila, and Juana Jimenez, in case No. 4690, hereby resolves that the defendant judge be directed to forward at once to this court all the proceedings had in case No. 2655 of the said lower court, with respect to the legalization of the will and testament of the late Policarpo Gaerlan, as well as those in case No. 5816 of the said court entitled 'Teodoro M. Beech, plaintiff, vs. Juana Jimenez and Francisco Limcuando, defendants,' in order that the same may be reviewed by this court, and that the said judge be ordered to refrain from all further action in the ejectment proceedings in case No. 5816, and the testamentary proceedings in case No. 2655, in everything that affects or may affect the rights of the plaintiff, Teodoro M. Beech."

Both records having been duly forwarded, the appeal was heard on the 23d instant; the counsel for both parties were present, and it appears from their arguments: That the judgment rendered in the ejectment proceeding No. 5816, which gave rise to the appeal, contains the following orders: (a) Let judgment be entered in favor of the plaintiff, Teodoro M. Beech, and against the defendants Juana Jimenez and Francisco Limcuando, for the recovery of possession of the property described herein (the description then follows); (b) that the defendants be ejected from the same, and for the costs of the action, provided, that the possession shall not be given, nor the ejectment take place before the 15th day of May, 1908, and that in the meantime the defendants, or any of them, may repurchase the said property by paying over to the plaintiff, or to the court, the sum of P6,000, and the further sum of P50 per month, commencing with the month of June, 1907, until the time of payment; and (c) in case of repurchase, the note of consolidation entered in the registry of property by the plaintiff shall be annulled.

This judgment was rendered on the 27th of March, 1908, and as it was dictated on an appeal from a decision of the justice of the peace of Manila, there could be no further appeal therefrom, and proceedings in certiorari were interposed on the 14th of April, 1908.

From the above three orders in the decision of the Court of First Instance of Manila, the first, and a portion of the second, to wit: the finding in favor of Teodoro M. Beech and against the defendants Juana Jimenez and Francisco Limcuando for the recovery of possession of the two properties in question, and that the defendants be ejected therefrom with the costs of this action, give rise to no appeal whatever; but the second and third are appealable, inasmuch as by the second the execution of the ejectment is postponed until the 15th day of May, 1908, and in the meantime it authorizes the defendants, or any of them, to repurchase the properties by paying to the plaintiff, or to the court below, the sum of P6,000 and that of P50 per month, commencing with the month of June, 1907, until payment is effected, and because, by the third finding, it is ordered that, in case the said repurchase is made, the note of consolidation entered in the registry of property by the plaintiff shall be annulled. It is alleged that the

court below has exceeded its jurisdiction in the above two orders. The findings of fact contained in the said judgment of the Court of First Instance of Manila are the following:

"1. That on the 25th day of July, 1903, one Policarpo Gaerlan, now deceased, and Francisco Limcuando, sold two parcels of real estate, one pertaining to the former and the second to the latter, to Saturnina Salazar under pacto de retro, with the right to repurchase within two years; that this period was extended for two years, so that the time finally expired on July 25, 1907;

"2. That the properties were sold for the sum of P5,000, and afterwards the said Policarpo Gaerlan received an additional P1,000 from the said Saturnina Salazar on December 4, 1903, by means of a document executed between both parties and which was made a part of the former sale with pacto de retro.

"3. That the real estate thus sold continued in the possession of the vendors, who remained in possession thereof as tenants, agreeing to pay the sum of P50 per month (it should be added that this amount was later increased to P60 per month); that the rent was paid up to the month of June, 1907, but not being paid on that date an action was brought for the ejectment of the defendants as tenants, and for the recovery of the unpaid rent.

"4. That the said Saturnina Salazar transferred the said real estate to the plaintiff herein, Teodoro M. Beech, and that no notice of this transfer of title was given either to the deceased Policarpo Gaerlan, or to his representatives after his death;

"5. That the defendant Juana Jimenez, as administratrix of the estate of Policarpo Gaerlan, essayed to redeem that parcel of real estate which her husband had sold in July, 1907, and which was then in possession of the plaintiff, but the defendant Francisco Limcuando, the owner of the other parcel, refused to join in the repurchase, so the defendant Juana Jimenez, as administratrix, tendered what she deemed a proportional amount in order to repurchase the lot which her husband had sold; the plaintiff refused to accept it and resell a portion of the property, insisting that, if either were redeemed, both should be;

"6. That the defendant Juana Jimenez then increased the offer which she had theretofore made for the repurchase of the real estate sold by said Policarpo Gaerlan, and on the 25th day of July, 1907, offered the plaintiff P5,000, which the plaintiff refused to accept; in the meantime she had filed a request with the court to fix in the testamentary proceedings the amount necessary to be paid to repurchase the land in question, and of the filing of this instance the plaintiff had notice prior to the expiration of the term of the right to repurchase, under the pacto de retro;

"7. That finally, a day or two after the time for repurchase had expired, the defendant Juana Jimenez offered the plaintiff the whole amount of the pacto de retro, but the plaintiff refused, alleging that he had already consolidated the title by making the proper marginal notation in the registry of property;

"8. That the rent for the property sold has not been paid since and including the month of June."

The conclusions of law of the court below are as follows:

"First. That the plaintiff was not obliged to resell a part only of the real estate purchased, but was entitled to demand the redemption of the whole or none;

"Second. That the defendant Juana Jimenez did not make a tender of the whole purchase price until after the period for repurchase had expired, but not having been notified of the transfer of the property, and having made diligent effort in the administration of the estate to pay the amount which might be due, and having filed a statement in court at the time the period for repurchase expired, to the effort that she was ready to pay whatever sum the court might declare necessary to effect the repurchase, she is entitled to repurchase the real estate in question for the amount of the sale under pacto de retro and the payment of the amount agreed upon as rent when the sale was made, that is, P50 per month, from and including the month of June, 1907."

The foregoing facts and findings of law contained in the judgment being thus stated, this court now proceeds to set forth the following facts that appear in the record:

- That in the additional instrument executed by Policarpo Gaerlan by reason of the increase of the purchase price by P1,000, the said Gaerlan bound himself to pay 10 "over and above the rent of P50 per month which, as he says, we have been paying so far in accordance with the terms of the said instrument." (Case No. 5816, folio 16.)
- That in the testamentary proceedings of the late Policarpo Gaerlan (case No. 2655) there appears at folio 28 the following petition from the attorney of the executrix, dated August 21, 1907: "The plaintiff therefore prays the court to determine the sum or sums which in justice and equity should be paid to T. M. Beech for the redemption of the respective properties."
- That in the previous ejectment proceedings (case No. 5816), a copy of the action taken in the other case was offered as evidence, which is in substance as follows:

"The holder of the said credit under pacto de retro, Teodoro Beech, is hereby ordered to refrain from making the note of consolidation of the said property in the registry until the title of this estate thereto has been determined.—Let one copy of this order be at once delivered to the said Teodoro Beech for his information.—Manila, P. I, July 26, 1907.—A. S. Crossfield."

At foot thereof there appears the following note;

"I have delivered a copy to Don Teodoro Beech at 11 a. m. on this date.—Manila, July 29, 1907. Jose Sanchez.—D. S. M." (folio 38.)

- That the note consolidating the ownership was entered by the registrar on the 26th day of July, 1907, as certified at folio 15.

But, in deciding the question of the remedy in the case now before us, the following must be considered:

That on appeal to the Court of First Instance from a judgment of the justice of the peace the nature of the question raised by the complaint and the answer thereto in the original suit can not be altered without changing the nature of the object of the appeal.

That the complaint filed with the justice of the peace on the 5th of September, 1907, against Juana Jimenez and Francisco Limcuando, by default against the latter, was for ejectment by reason of the lack of payment of the rents stipulated in a contract of lease; this complaint is authorized by article 1569 of the Civil Code which reads:

"The lessor may judicially dispossess the lessee for any of the following causes:

"1. * * * * *

"2. Default in payment of the price agreed upon."

That the contract of lease whereby the defendants were in possession of the two properties sold under pacto de retro was absolutely independent of the said pacto, inasmuch as there may exist a right to redeem without one of lease, and vice versa, a lease without right of redemption.

That the complaint for ejectment on account of lack of payment of rent was not excepted to; on the contrary, the defendant present admitted that she owed rent for one month and twenty-five days, at the rate of P60 per month, and for this reason the judgment of the justice of the peace was for the payment, by the defendants to the plaintiff, of the sum of P120, as rent for the said properties for the months of June and July, 1907, and for such as might be owing from the 1st of August, 1907, until such time as they should vacate them, at the rate of P60 per month.

That if one of the defendants was entitled to repurchase the properties by reason of the pacto de retro, it was no reason why he should refrain from paying the rentals agreed upon in the contract of lease, because the said pacto and contract are entirely separate and distinct; for this reason the court of appeal rightly stated that "the allegation of the defendant Juana Jimenez, to the effect that, she being a tenant as well as the vendor of the properties sold under pacto de retro, the plaintiff could not evict her during the period in which she was entitled to repurchase it, is immaterial."

That the justice of the peace must have also thus considered the following answer given by the defendant in the eviction proceedings: "And that there is a case bearing on the same subject in the Court of First Instance of Manila, No. 2655, in which an order was issued prohibiting the plaintiff from making the note of consolidation in the registry of property," when for the purpose of its decision the court has not in any manner taken such an allegation into consideration as a defense.

That if the complaint for eviction had been based upon the expiration of the term of the contract of lease for the reason that the period for the pacto de retro had expired, and if the complaint had been answered by the defense that, in view of the fact that the defendants were still entitled to redeem the properties held on lease, the term of said contract could not be considered as having expired, then such an allegation would have been worthy of consideration by the justice of the peace, and subsequently on appeal by the Court of First Instance, and the finding of either court, whatever it may have been, right or wrong, just or unjust, within the terms of the question set up and sustained, would not be out of place and of the jurisdiction of the court; but this not being the case, it is improper and an evident extralimitation of jurisdiction in the matter on trial, to deal with the right of redemption in an action for eviction for lack of payment of rent, that is, for the violation of the contract of lease.

That if the defendant Juana Jimenez still wished to avail herself of the right of redemption after the term of the contract had expired on the 25th of July, 1907, she could not attempt or enforce such a right by consulting a court as to the price that should be paid, nor by praying for a writ of injunction or prohibition against the other contracting party, but solely and simply by bringing such action as she might consider herself to be entitled to, and by such legal remedies depending upon such action as may be proper on the strength of the contract itself; that neither delay nor ignorance, nor the interest of minors, may be considered as a privilege or exception to the rule established by the civil law for the enforcement of contracts. That when a purchaser believes he is entitled to consider that the right of redemption on the part of the vendor has expired, and requests a note of consolidation in the registry of property, his action is authorized by the civil law, and also by the Land Registration Act, as a perfect method of extinguishing an obligation, and such a legal act may only be annulled or canceled by virtue of a final and executory judgment rendered in an action ad hoc between the parties interested in the said right and its extinction, but not by means of an incidental order upon an ex-parte petition without notice to or hearing by the other party.

In consequence of the foregoing, it is clearly evident that in this case, one for eviction for nonpayment of rent, which matter alone falls under the jurisdiction of either court, the questions of the right of redemption and judicial extension of the formal term agreed upon in a contract, or that which legally exists by virtue of the express law which controls the parties thereto, to wit, the contract itself, stand out as extralimitations greatly beyond the object of the action and of the judgment appealed from; still more so does the order with respect to the cancellation or nullification of a note of consolidation entered in the registry of property, which has not been the subject of a proper action or trial. Besides, no petition or formal demand was made, praying for an extension of the contractual term which determines the rights and obligations of the parties, and there is no law that authorizes a court, in a case like this, to extend such a term, and to extend it de motu proprio.

Therefore, the said orders are illegal and entirely null and void, and against the said illegality and nullity there can

be no appeal or other adequate and expeditious remedy except that now exercised under section 217 of the Code of Civil Procedure. In accordance with section 220, we decide that the court below did not act with due regularity in the exercise of its authority.

We definitely affirm the first order contained in the judgment of the Court of First Instance of Manila in so far as it holds that the plaintiff is entitled to recover possession of the two properties described in the judgment, and so far as it orders that the defendants be ejected therefrom with costs; all the other orders in the said judgment are hereby annulled, without any special ruling as to costs in this appeal. Furthermore, defendant is hereby sentenced to pay the monthly rental of 60, from June, 1907, until the possession of the properties is surrendered. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ.

MOTION TO AMEND JUDGMENT.

DECEMBER 18, 1908.

Now comes the plaintiff in this case alleging that, according to the contract of lease, the tenant was under obligation to pay the land tax; that she failed so to do, and in consequence, the plaintiff, in order to avoid the sale of the property by reason of insolvency, was obliged to pay it; that, by virtue thereof, he prays that in the judgment that may be rendered on the 22d instant, in accordance with our decision, the sum of P341.44 be included to cover land tax.

Whereas, under section 220 of the Code of Civil Procedure, the Supreme Court when finally deciding in certiorari proceedings can only pass upon questions that should have been decided by the court a quo, either affirming, annulling, or modifying its proceedings, and as the court below was not called upon to decide any question relative to the payment of the industrial tax which this court might affirm, annul, or modify; and

Whereas, although the Court of First Instance, in the event of the plaintiff recovering possession of his premises shall, under section 88, render judgment in his favor for the amount of rents due, together with damages, it is not authorized to decide matters other than those contained in the original complaint filed with the justice of the peace;

Therefore, the supplementary motion to amend the decision rendered, that is, that the amount prayed for in the foregoing petition be added to the judgment, is hereby dismissed.

Arellano, G. J., Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ.

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