

**JOSE RONGO AND PERPETUO PUERTO, PLAINTIFFS-APPELLANTS,
VS. SABAS M. ABASTILLAS, DEFENDANT-APPELLEE.***G.R. No. 48830. March 30, 1943*

Ponente: OZAETA, J.

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On July 3, 1935, Silvestra Lubrico and Sabas M. Abastillas entered into a contract whereby the former leased to the latter lot No. 933 of the Pontevedra cadastre, containing 22.6405 hectares, for the period of five agricultural years beginning 1936-1937, extendible for another period of fifteen agricultural years at the option of the lessee. It was stated in the contract that said land "is dedicated to the planting of sugar cane and is registered in the La Carlota Sugar Central as a miller with a quota of about 500 piculs." The stipulations as to the payment of the rent provide as follows:

"3.—El arrendatario se obliga a pagar a la Arrendadora, en concepto de alquiler o arriendo, el diez por ciento (10%) de la cuota asignada a la parcela de terreno arriba descrita como cuota de exportation, de acuerdo con la orden u ordenes ejecutivas que librare Su Excelencia el Gobernador-General, en definitiva o de año en año, como sea el caso, de tal suerte que si para la cosecha de 1936-37 dicha cuota de exportation se fijare en 500 picos, el Arrendatario pagara a la Arrendadora la cantidad de 50 picos solamente, o, si se rebajare, el 10% de la cuota asi rebajada. Para los efectos de este arrendamiento o alquiler la Central Azucarera de La Carlota, en donde se muele la caña-dulce procedente del lote arrendado, queda por el presente autorizada para que pueda retener y retenga, desde el comienzo de cada molienda, el 10% del azucar centrifugado que se produjere semanalmente de la cana-dulce sembrada en el terreno objeto de este arrendamiento, hasta que se cubra el 10% de la mencionada cuota, debiendo entregar directamente a la Arrendadora, o a su representante debidamente autorizado, los quedanes representativos del referido 10% de arriendo. * * *

"4.—Durante la vigencia de este contrato y con tal de que el Arrendatario pueda sembrar las partes del terreno arrendado productibles de caña y suficientes para cubrir la cuota asignada, dicho Arrendatario podra dedicar el resto del terreno a cualquiera otra clase de siembra o producto, sin que para ello tenga que participar nada a la Arrendadora de cualesquiera producto o beneficio que obtuviere en dicha parte no sembrada de cana, pues se ha estipulado expresamente que la Arrendadora no percibira cantidad alguna del Arrendatario en concepto de alquiler del terreno arrendado de todas cualesquier siembras que no sea la cana-dulce."

Said contract was duly registered and annotated on the certificate of title.

On October 23, 1936, the herein plaintiffs bought said lot No. 933 from Silvestra Lubrico. In 1937 the herein defendant Sabas M. Abastillas and one Andres Javier instituted civil case No. 7257 in the Court of First Instance of Occidental Negros against Silvestra Lubrico and the herein plaintiffs Jose Rongo and Perpetuo Puerto for the foreclosure of a mortgage on another lot which had also been bought by Jose Rongo and Perpetuo Puerto from Silvestra Lubrico, subject to the mortgage. In that action the defendants in their answer set up a cross-complaint in which, as a first cause of action, they claimed damages against the plaintiff Sabas Abastillas for nonpayment of the rent on lot No. 9J33 corresponding to the agricultural years 1935- 1936 and 1936-1937; and, as a second cause of action,. prayed for the rescission of said contract of lease on the alleged ground of breach by the lessee of the

condition thereof regarding the payment of the rents. In deciding said case No. 7257 the court absolved the plaintiffs from the cross-complaint upon the following finding:

"En cuanto al lote 933 que Sabas Abastillas tomo en arrendamiento de la demandada desde el ano agricola de 1935-36, se ha demostrado que no tenia la cuota de quinientos picos que se menciona en el contrato correspondiente, pero que ultimamente se le ha podido asignar una cuota de 142.23 picos, diez por ciento de la cual debe pertenecer a la demandada, y que segun la misma escritura la Central Azucarera de La Carlota esta autorizada a retener para ser entregada a la arrendadora, y que, segun Sabas Abastillas, obra en poder de la central a disposition de Silvestra Lubrico."

The defendants did not appeal from said decision, but nearly two years after its rendition, that is to say, on July 28, 1939, instituted the present action for the rescission of the said contract of lease and for damages, alleging among other things the following:

"That after a careful reading of the above-cited contract, the conclusion is clear that the sole and only cause, consideration or motive which was the principal inducement leading to the agreement and execution of said contract of lease was the fact that Lot No. 933 subject of the lease had a registered quota of 500 piculs of centrifugal sugar as stated in paragraph 1 of said contract of lease;

"* * * * *

"That after the execution of the aforesaid contract of lease and the defendant had already taken possession of the premises, and after the allocation of the quota by the La Carlota Sugar Central, it resulted that said Lot No. 933 did not have any sugar quota, nor did it ever have at all as contemplated by the parties in the aforesaid contract of lease;

"That the parties in the aforesaid contract of lease at the time of its execution, had in good faith believed that the land subject of the contract had a sugar quota of 500 piculs, and by believing so and agreeing to base the rentals upon the said quota, the parties had made a mistake or error with respect to the substance of the thing, which is the object or subject matter of the contract;

"That a situation very prejudicial and unequitable to the lessor (plaintiffs) exists in a way that the lessee (defendant) continued to possess the premises for his sole and exclusive use and benefit without the least participation to the lessor or the owners of the land, who, up to the filing of this complaint, have never received any share or rental from the land leased by the defendant, and that the same situation will become more aggravated by defendant's option of renewal of the lease for another period of fifteen (15) years (paragraph 2, contract of lease)."

The defendant pleaded *res judicata* as a defense and, in a petition supported by the pleadings and a copy of the decision in case No. 7257, asked for a summary judgment in accordance with section 2 of Rule 36. The court sustained the pleas and dismissed the complaint without any pronouncement as to costs. Hence this appeal.

Appellants contend that the trial court erred (1) in sustaining the plea of *res judicata* and (2) in granting the petition for summary judgment without having tried the case on the merits.

First. The plaintiffs are bound by the finding of the court in the previous case that subsequent to the execution of the contract of lease in question a quota of 142.23 piculs was assigned to lot No. 933, 10% of which ought to correspond to the lessor, and that in accordance with the contract of lease La Carlota Sugar Central was authorized to retain and was retaining that portion of sugar subject to the disposition of the lessor. In respect to this matter, which was directly adjudged, the former judgment is conclusive between the parties. (*Peñalosa vs. Tuason*, 22 Phil., 303; section 44 [b] Rule 39.) Therefore, the plaintiffs cannot be heard in the present action to say, as they allege in their complaint, that lot No. 933 never had any sugar quota and that they never received any

rental from the land leased by the defendant. It is of no avail to the plaintiffs to contend, as they do, that in the previous case the cause of action they alleged for the rescission of the contract of lease in question was the lessee's failure to pay the stipulated rents while in the present case their cause of action for rescission is lack of consideration, i.e., the nonexistence of the expected quota of 500 piculs. Both of these so-called causes of action for rescission existed at the time the present plaintiffs filed their cross-complaint in the previous case. All that should have been but was not alleged then is deemed to have been waived and cannot be availed of in a subsequent action between the same parties over the same subject matter. (*Peñalosa vs. Tuason*, supra.) It goes without saying that the trial court committed no error in sustaining the plea of *res judicata*.

But regardless of the validity of that plea, we think plaintiffs' action could not prosper in any event upon the facts alleged in their complaint. The burden of their contention, as we gather it from their complaint and from their brief in this Court, is that the contract of lease in question is one-sided and highly disadvantageous to the lessor because the quota assigned to the land leased turned out to be only 142.23 piculs, and 10 % of that is only 14 piculs a year, which is utterly inadequate to compensate the use and occupation by the lessee of 22½ hectares of agricultural land which, according to the plaintiffs, is capable of producing 400 cavans of palay and 1,000 piculs of sugar a year. But the stipulation in the contract on this point, which we have hereinbefore set forth, constitutes a valid consideration; and in the absence of any allegation that the lessor was not of sound mind at the time she entered into said contract, or that she signed it thru force, intimidation, or fraud, the court is powerless to relieve her from her obligation however much it may sympathize with her in her plight. The plaintiffs bought the land from her and assumed the lessor's obligation with full knowledge of its terms and conditions. The allegation that the parties made a mistake with respect to the substance of the thing in that they believed said land had a sugar quota of 500 piculs, is but a conclusion of fact which is belied by the stipulation in the contract that the lessee shall pay to the lessor 10% of the quota for export sugar' that may be assigned in accordance with the order of the Governor-General from year to year, "so that if the export quota for 1936-1937 be fixed at 500 piculs the lessee shall pay to the lessor 50 piculs, or if it be reduced, 10% of the quota as reduced."

As a matter of fact, in bringing an action for rescission the plaintiffs impliedly recognize that the contract sought to be rescinded was validly entered into. Article 1290 of the Civil Code says that contracts validly entered into may be rescinded in the cases established by law. Those cases are indicated in articles 1291 to 1298; but the case for the plaintiffs does not fall within any one of those articles. On the contrary, article 1293 provides that no contract shall be rescinded for lesion excepting those mentioned in paragraphs 1 and 2 of article 1291; that is to say, those entered into by guardians without the authorization of the family council and those executed in representation of absentees. The contract in question does not fall within either of these provisions.

However, we are bound to take notice of current history and cannot ignore the fact of common knowledge that subsequent to the rendition of the judgment appealed from and since the agricultural year 1942-1943, the sugar quotas for exportation from the Philippines have disappeared. For that reason it would now seem impossible to determine the amount of the rent under the contract of lease in question. But we cannot base our decision upon such subsequent historical fact and declare said contract extinguished for impossibility of performance, because that is not within the issues submitted to us for decision and the parties have not been heard on that matter. We merely make the observation so that our judgment may not be interpreted as affirming that the plaintiffs are bound by the contract in question for the rest of the fifteen-year period therein stipulated regardless of the abolition or disappearance of the sugar quota for exportation. Is it perchance much to hope that, as become good neighbors and honorable and fair-minded men, the parties will amicably settle their differences, modifying their agreement as to the rent in view of the new and unforeseen situation that has arisen, thereby avoiding further litigation for the sake of social amenities and of their own economic interests? It is the duty of counsel to strive for that settlement.

Second. The summary judgment rendered by the trial court was a judgment on the merits and was permitted by Rule 36, inasmuch as there was no genuine issue as to any material fact and the question involved was purely one of law.

The judgment is affirmed, with the costs of this instance against the appellants. So ordered.

Yulo, C.J., Moran, Paras, and Bocobo, JJ., concur.

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