

CELESTINO AGUILAR, PETITIONER, VS. GUILLEMO CABRERA JUDGE OF THE MUNICIPAL COURT OF MANILA AND RAFAEL FLAMAÑO, RESPONDENTS.

G.R. No. 49129. June 30, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

Mandamus to compel the respondent judge to hear and decide on the merits a desahucio case which he dismissed in the belief that he had no jurisdiction over the subject matter.

It appears that on October 18, 1943, Rafael Flameño executed a deed of absolute sale in favor of Celestino Aguilar whereby in consideration of the sum of P57,000 the former sold, transferred, ceded, and conveyed to the latter, "absolutely and unconditionally, free from any lien or encumbrance of whatever kind or nature," a certain parcel of land located in the city of Manila together with the buildings and other improvements thereon. Said document was subsequently registered and the corresponding transfer certificate of title (No. 68575) was issued in the name of purchaser.

Simultaneously with the execution of the deed of sale written contract of lease of the same property was enter into between Celestino Aguilar as owner and Rafael Flameño as lessee, wherein it was agreed: (1) that the lessee shall occupy said premises for a period of thirty days from October 18, 1943, free from any charge or emolument whatsoever; (2) that upon the expiration of said period of thirty days the lessee may still occupy said premises for another period of sixty unextendible days from the expiration of the original period of thirty days aforementioned, on condition that said lessee shall pay a monthly rental therefor at the rate of P150 payable in advance during the first five days of each month; (3) that upon the expiration of the said period of sixty days above mentioned the lessee shall vacate the premises "promptly and peacefully," and shall indemnify the owner for any damage, loss, or expense that the latter may incur on account of any violation of any of the conditions of the agreement.

The total period of ninety days stipulated in said contract of lease expired on January 16, 1944. Nevertheless, Flameño refused to vacate the premises notwithstanding Aguilar's repeated demands.

On or about January 21, 1944, Aguilar filed with the respondent judge of the municipal court of Manila a complaint against Flamenno for unlawful detainer, praying that the defendant be ordered to vacate the premises in question, to reimburse to the plaintiff the sum of P174.52 as taxes on the property which said plaintiff had paid for the account of the defendant, to pay to the plaintiff the sum of P1,500 as damages and the sum of P500 a month from the filing of the complaint as the reasonable value of the use and occupation of the premises in question.

On January 28, 1944, Flamenno filed a written answer to the complaint, alleging that the deed of sale as well as the contract of lease hereinbefore mentioned is fictitious and simulated and does not express the true intent and agreement of the parties, and that on even date with his answer Flameño had instituted an action in the Court of First Instance against Aguilar to annul the said contracts, to declare that the real agreement between the parties was in effect a mortgage of the premises in question by Flameño in favor of Aguilar in the sum of P50,000 with

interest at ten per centum per annum, and to. order the register of deeds of Manila to cancel transfer certificate of title No. 68575 in the name of Aguilar and to issue in its stead another certificate of title in the name of Flameño.

When the cause was called for trial, counsel for Flameño questioned the jurisdiction of the municipal court to hear and decide the case on the merits, alleging in substance that the issue involved the ownership of the premises in question; and the respondent judge, without hearing the evidence, required the parties to submit written memorandum upon that question of jurisdiction. In the meantime Aguilar filed an amended complaint to make it conform substantially to the form of complaint for ejectment given, in the Rules of Court, with the intention of simplifying the issues, and moved the court to admit that amended complaint.

On February 29, 1944, the respondent judge entered an order wherein he states that after considering the memorandums submitted by the parties and after examining the amended complaint he arrived at the conclusion that the original complaint should be dismissed and the amended complaint should be rejected for the following reasons: (1) that the plaintiff admits in his original complaint that he has never been in possession of the premises in question and that, therefore, he has no right to institute the action even if he were the owner of said premises; (2) that if the plaintiff has not been in possession of said premises he cannot very well ask that he be restored into the possession which he never had; (3) that the question of mere possession cannot be resolved without first resolving the question of ownership because the former is necessarily involved in the latter; (4) that the deed of sale as well as the contract, of lease is being impugned in the Court of First Instance, on the ground that both documents are alleged to be fictitious and simulated and do not express the true intent and agreement of the parties; (5) that in the original as well as in the amended complaint damages for breach of contract are claimed and for that reason the court has no jurisdiction to take cognizance of the case; (6) that the amount claimed as damages does not fall within the jurisdiction of municipal court; and (7) that the amendment to the original complaint substantially changes the nature of the action. For these reasons the respondent judge rejected the amended complaint and dismissed the case with costs against the plaintiff.

The questions raised by the parties in these proceedings are (1) whether or not mandamus lies in this case and (2) whether or not the respondent judge has jurisdiction to hear and decide the said case on the merits.

1. When the petition for mandamus was first submitted to us preliminarily, a majority of this Court were of the impression and so resolved that an appeal was the proper remedy; but upon the reconsideration applied for by the petitioner the Court was unanimously convinced that an appeal would not be a plain, speedy, and adequate remedy and would frustrate the ends of justice. For, should an appeal be resorted to, the decision of the Court of First Instance, which would necessarily be confined to the question of law as to whether or not the municipal court has jurisdiction to try and decide the case (see section 10, Rule 40), would not definitely settle the question, for the parties could and in all probability would appeal therefrom to this Court for final adjudication; and should the final judgment be one of reversal of the order appealed from, the case would have to be remanded to the Court of First Instance for the latter to remand it to the municipal court for trial on the merits. That would certainly entail unnecessary delay and expense to the parties themselves. Unless his intention is to delay such final adjudication—which should not be countenanced — neither party has a conceivably valid reason to object to the direct, more speedy, and less expensive means to attain the same end. There is no argument which either party lay adduce before the Court of First Instance on appeal that he cannot adduce before this Court in these proceedings. "The fact that in this case appeal may lie does not prevent the granting of the remedy applied for, once it is proven that the respondent judge has refused to perform an imperative duty enjoined by the law." (Cecilio vs. Belmonte, 48 Phil., 243, 255.)

If the respondent judge had jurisdiction to try and decide the case but nevertheless refused to do so in the erroneous belief that he had no jurisdiction, the remedy of mandamus is available to correct such error and compel

him to exercise his jurisdiction. Under section 3 of Rule 67, when any tribunal unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, it may be compelled by mandamus to do the act required to be done to protect the rights of the petitioner. If the case before the respondent judge is really one of unlawful detainer, the law—Rule 72—specifically requires him to hear and decide that case on the merits, and his refusal to do so would constitute an unlawful neglect of the performance of that duty within section 3 of Rule 67.

2. This brings us to the second question, whether the action brought by the petitioner against the respondent Flameño in the court of the respondent judge is one of unlawful detainer as the plaintiff contends, or an action necessarily and unavoidably involving the title to the premises as the defendant insists. As we have said in *Mediran vs. Villanueva*, 37 Phil., 752, 759, and in various subsequent cases in which that decision has been followed, to determine whether a particular action is a purely possessory action, and as such within the jurisdiction of the court of the justice of the peace or municipal court, or an action founded on property right and therefore beyond the jurisdiction of such court, the averments of the complaint and character of the relief sought must primarily be considered; "but it would be a mistake to suppose that an action involves question of title merely because the plaintiff may allege it his complaint that he is the owner of the land." Now, examination of the original as well as of the amended complaint filed by the petitioner with the respondent judge shows that it alleges, in substance, that the defendant has since October 18, 1943, occupied the premises in question as a lessee of the plaintiff under a written contract of lease wherein the defendant obligated himself to vacate said premises "promptly and peacefully" after the lapse of ninety days from the date of said contract, and that notwithstanding the lapse of said period the defendant has refused to vacate said premises, and the prayer in both the original and the amended complaint is for the ejectment of said defendant from the premises and for damages, aside from the reimbursement of P174.52 advanced by the plaintiff as taxes. The plaintiff does not seek that he be declared the owner of the property in question; he has no need to do so because he holds a Torrens title thereto. Therefore, if we are to judge by the allegations and the prayer of the complaint to determine the nature of the action, we cannot but definitely and positively conclude that it is one of unlawful detainer. And as we have repeatedly decided, we must judge by the allegations and prayer of the complaint, and not by the allegations of the answer. "It cannot be permitted that the defendant should defeat this action merely by inserting in his answer a claim of ownership in himself. Whether the court of a justice of the peace has jurisdiction to entertain an action of this character must be determined from the form in which the complaint is drawn—not from the allegations of the answer." (*Medel vs. Militante*, 41 Phil., 526, 529.)

Therefore, the mere fact that the respondent Flameño claims in his answer to be the owner of the premises in question by alleging that the deed of sale and the contract of lease do not express the true intent and agreement of the parties, cannot change the nature of the action and convert it from one of unlawful detainer into an action over the title to and ownership of said premises. This does not mean that the defendant will not be permitted to prove the allegations of his answer to rebut or destroy the proofs that the plaintiff may offer in support of the allegations of his complaint. Without necessarily having to decide whether or not plaintiff's title to the property in question is valid, the respondent judge may, after hearing the evidence of both parties, determine, as contemplated in section 6 of Rule 72, whether or not the complaint is true. If he finds that the complaint is not true because he believes that the proofs adduced in support thereof are overcome by the proofs of the defendant, he may dismiss the complaint, not because he has no jurisdiction over the case but because the plaintiff has failed to prove his complaint. (*Lizo vs. Carandang* [1942], 2 Off. Gaz., 302.)

The fact that the defendant has instituted an independent action in the Court of First Instance to annul plaintiff's title to the premises in question is not a valid reason to frustrate the summary remedy of ejectment afforded by law to the plaintiff. The defendant would wish the plaintiff to desist from such remedy to avoid multiplicity of

suits. But as the law gives the plaintiff such remedy and as he had availed of it before the defendant commenced a separate action in the Court of First Instance, the multiplicity of suits cannot be blamed on him. Moreover, the two cases are for different purposes.

As to the other reasons stated by the respondent judge in his order of dismissal, suffice it to observe that he has evidently overlooked the distinction between a case of forcible entry and a case of unlawful detainer, and that in the latter, which is available to a landlord or a vendee, prior, physical possession in the plaintiff is not an indispensable requisite; and with regard to the damage claimed by the plaintiff, these are merely accessory to the main action and are expressly permitted by law to be recovered therein. (See sections 1 and 8, Rule 72; *Yango vs. Romero*, 32 Phil., 129; and *Hahn vs. Tuason & Co., Inc.*, 40 Off. Gaz., 2808, 2809-2810.)

Wherefore, let the writ of mandate issue forthwith prayed for by the petitioner, with costs.

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

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