

**FLORENTINO CURSINO, PETITIONER, VS. HON. PEDRO JL. BAUTISTA,
(DISTRICT JUDGE, CFI, BRANCH III, PASAY CITY), HON. NICANOR J.
CRUZ, JR. (PRESIDING JUDGE, MUN. COURT OF PARANAQUE, ...**

G.R. No. 50335. August 07, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari seeking to reverse and set aside (a) the decision of the then Court of First Instance of Rizal* (now Regional Trial Court) dated October 30, 1978 in Civil Case No. Pq-6364-P affirming in toto the decision of the then Municipal Court of Paranaque** (now Metropolitan Trial Court) dated April 17, 1978 in Civil Case No. 3809 entitled "Maria James vs. Florentino Cursino", ordering defendant (herein petitioner) and all persons claiming under him to vacate plaintiff's (herein private respondent) leased premises and to pay monthly rentals, attorney's fees and costs of suit, and (b) the order of the then Court of First Instance dated February 28, 1979 denying petitioner's motion for reconsideration.

The factual background of this case as quoted from the decision of the Court of First Instance of Rizal, Branch III, Pasay City, is as follows:

""From the record of this case, it appears that plaintiff is the lawful owner and lessor of the premises located at 4143 17 de Marzo St., Baclaran, Paranaque, leased by defendant at a monthly rental of P100.00, payable within the first five days of each month; that defendant defaulted in the payment of his monthly rental for the months of October, November and December, 1977; that defendant sent two (2) postal money orders, both dated December 21, 1977, one bearing Money Order No. E-1162-55 in the amount of P200.00 as payment for the months of October and November, 1977, and the other bearing Money Order No. E-1162-56 in the amount of P100.00 for the December 1977 rental; that prior to the sending of said postal money orders, plaintiff on December 14, 1977 demanded that defendant pay the back rental and vacate the premises at 4143 17 de Marzo St., Baclaran, Paranaque, 'within a period of five (5) days from receipt of this letter' (Exh. 'A'); that despite the formal demand, defendant failed and refused to vacate the subject premises without justifiable cause; that by reason thereof, plaintiff was constrained to secure the services of counsel and incurred expenses in this litigation.

"The defendant contends that he has not defaulted in the payment of rents and that it was the plaintiff who refused to accept the same. As a matter of fact, defendant claims that he sent Postal Money Order No. E-1162-55 dated December 21, 1977 in the amount of P200.00 as rental payment for the months of October and November 1977, and another Postal Money Order No. E-1162-56 also dated December 21, 1977 in the amount of P100.00 for the December 1977 rental. It is further contended that since the lease of the subject dwelling place is only for P100.00 a month, it is 'protected under Sections 1 and 4 of Presidential Decree No. 20.'" (Rollo. pp. 40-41).

Petitioner did not vacate the premises as demanded and so a complaint for unlawful detainer dated December 27, 1977 was filed by respondent before the then Municipal Court of Paranaque. After hearing, the court rendered its decision (Rollo, pp. 32-38) dated April 17, 1978 in favor of private respondent (the plaintiff herein), the

dispositive portion of which reads:

"WHEREFORE, Decision is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter and all persons claiming under him to vacate plaintiff's premises situated at 17 De Marzo Street, Baclaran, Paranaque, Metro Manila; ordering the defendant to pay plaintiff the amount of P100.00 representing rental for the month of March and to pay the same monthly rental of P100.00 commencing April, 1978 until such time that defendant and all persons claiming under him shall have completely vacated plaintiff's premises; ordering the defendant to pay plaintiff the amount of ONE THOUSAND (P1,000.00) PESOS as and for attorney's fees and to pay the costs of this suit." (Rollo, p. 38)

Not satisfied with the decision, petitioner appealed to the then Court of First Instance of Rizal which on October 30, 1978, rendered a decision (Rollo, pp. 40-43) affirming in toto the decision of the municipal court with double costs against petitioner.

Petitioner moved for the reconsideration of the decision (Rollo, pp. 44-53), but the same was denied with treble costs against petitioner in an order dated February 28, 1979 (Rollo, pp. 54-55).

Hence, this instant petition filed on May 15, 1979 (Rollo, pp. 10-23).

Petitioner submits the following reasons for the allowance of the petition:

FIRST REASON

LIKE THE TRIAL COURT, RESPONDENT HON. PEDRO JL. BAUTISTA OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH III COMMITTED GRAVE ERROR IN THE INTERPRETATION AND APPLICATION OF SECTION 2, RULE 70, RULES OF COURT.

SECOND REASON

RESPONDENT JUDGE BAUTISTA COMMITTED GRAVE ERROR IN RULING THAT THE PROVISIONS OF PRESIDENTIAL DECREE NO. 20, MORE SPECIFICALLY PARAGRAPHS 1 and 4, ARE NOT APPLICABLE TO THE CASE AT BAR.

THIRD REASON

RESPONDENT JUDGE BAUTISTA COMMITTED GRAVE ERROR IN RULING THAT PARAGRAPH 2, ARTICLE 1673 OF THE CIVIL CODE OF THE PHILIPPINES IS THE APPLICABLE LAW IN THE CASE AT BAR." (Rollo, p. 14)

In a resolution dated June 20, 1979 (Rollo, p. 62), the petition was given due course and both parties were required to submit simultaneous memoranda. On November 5, 1979, respondent Maria James submitted her memorandum (Rollo, pp. 70-73), while in a manifestation dated October 31, 1979 (Rollo, pp. 74-75), petitioner adopted the petition as his memorandum. In the resolution of November 19, 1979 (Rollo, p. 77), the Court resolved to declare this case submitted for decision.

The issue is whether or not respondent Maria James still has a cause of action against the petitioner after she received and accepted the rentals for October, November and December 1977 at the time of filing of the instant case. Otherwise stated, is the possession of the lessee legitimized by the lessor's acceptance of the payment of back rentals?

The answer is in the negative.

Private respondent exercised two unquestionable prerogatives of the owner-lessor when a tenant-lessee defaults in

the payment of the rent, i.e., to demand that: (a) the back rentals be paid, and (b) the premises be vacated.

The records show that petitioner has defaulted in the payment of his rentals for the months of October, November and December, 1977; that although he paid the same on December 22, 1977 after receipt of private respondent's demand letter, he has not paid them on time, the due date being on the first five (5) days of each month (Rollo, p. 58); and that petitioner refused to vacate the premises on the ground that he is protected under Sections 1 and 4 of Presidential Decree No. 20 (Rollo, p. 41).

Under Presidential Decree No. 20, it is very clear that only paragraph (1) of Article 1673 of the Civil Code which refers to expiration of leases of dwelling unit or land for an indefinite period, as ground for ejectment, is suspended but not the other provisions of the Civil Code and the Rules of Court. In fact, this Court has categorically ruled that P.D. No. 20 suspended ejectment when the lease is for an indefinite period. It did not suspend ejectment on other grounds like lack of payment of the rental stipulated (*Velez v. Avelino*, 127 SCRA 602 [1984]).

In the same manner, petitioner's insistence that he has not defaulted in the payment of rents because it was private respondent who refused to accept the same, will not help the former. As ruled by this Court, "The failure of the owners to collect, or their refusal to accept the rentals are not valid defenses. Article 1256 of the Civil Code provides that if the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignment of the thing or sum due." (*Velez v. Avelino*, supra). Petitioner failed to comply with the requisite consignment.

But petitioner further argues that in spite of his payment of back rentals within five days from receipt of the demand letter, private respondent filed the complaint for ejectment which allegedly is contrary to the provision of Section 2, Rule 70 of the Rules of Court.

Such argument is untenable.

It will be recalled that private respondent formally demanded from the petitioner, the following: (a) to pay the back rentals, and (b) to vacate the premises.

Petitioner was able to pay the back rentals but refused to vacate the premises. Undoubtedly, petitioner's belated payments of his back rentals do not automatically restore the contract of lease without private respondent's consent. The terms of the contract of lease have been violated and the lessor-owner has the unquestionable right to withdraw from said contract or agreement whether oral or written. This Court has consistently ruled that "It is the landlord's demand for tenant to vacate the premises, when the tenant has failed to pay the rents on time and tenant's refusal or failure to vacate, which make unlawful withholding of possession (*Canaynay v. Sarmiento*, 79 Phil. 36 [1947]; *Desbarats v. Vda. de Laureano*, 18 SCRA 116 [1966]; *Balucanag v. Francisco*, 122 SCRA 498 [1983]). In fact, this Court stressed: "That consent, no matter how long it may last makes lawful tenant's possession. Only when that consent is withdrawn and the owner demands tenant to leave the property is the owner's right of possession asserted and the tenant's refusal or failure to move out makes his possession unlawful because it is violative of the owner's preferential right of possession" (*Canaynay v. Sarmiento*, supra). In the case at bar, respondent-lessor did not consent to petitioner's possession of the leased premises after the latter's default in the payment of the monthly rents. On the contrary, respondent demanded that petitioner pay the back rental and vacate the premises. The refusal of the petitioner to vacate the premises after demand, makes his withholding of possession unlawful.

WHEREFORE, the assailed decision and order of the then Court of First Instance of Rizal is Affirmed in toto.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

* Presided by District Judge Pedro JL. Bautista, Branch III, Pasay City.

** Presided by Judge Nicanor J. Cruz.

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