

ANGUSTIA SALDIVAR ET AL., PLAINTIFFS AND APPELLANTS, VS. THE MUNICIPALITY OF TALISAY, DEFENDANT AND APPELLEE.*G.R. No. 5523. February 10, 1911*

Ponente: CARSON, J.

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Plaintiffs, the widow and children of one Juarez, who died in the year 1895, seek in this action to recover possession of a certain house and lot now occupied by the defendant municipality as a municipal building. In the year 1889, this property, which it is admitted belonged at that time to Juarez, was levied upon (embargado) in the course of proceedings instituted by the provincial military-political governor to secure the payment of an alleged shortage of provincial funds with which Juarez was charged. At about the time when these proceedings were had, the municipal building was accidentally destroyed, and the municipal authorities moved into the house and lot in question, and have continued to occupy it ever since as a municipal building.

Plaintiffs insist that this occupation was an arbitrary exercise of power by the municipal authorities, made possible by the fact that the local authorities were charged with the levy of the embargo (attachment) ordered by the provincial governor. The defendant municipality, on the other hand, alleges that in taking and retaining possession of the property in question, it acted under and by virtue of an express agreement set out in writing, whereby Juarez agreed to turn over this property to the municipality; the municipality, on its part, agreeing to relieve Juarez of his responsibility for a substantial part of the alleged shortage of provincial funds which was charged against him.

It is quite clear that in the absence of some such agreement as that alleged by the defendant municipality, it had no lawful right to enter upon or to retain possession of the property in question. The evidence submitted in support of the execution of the alleged agreement in writing is not satisfactory. It consists merely of the somewhat uncertain oral testimony of a few witnesses who say that they were present when Juarez and the principalia (headmen) of the municipality executed the document setting out the terms of the contract. The document itself was not produced, although one of the witnesses for the municipality who testified as to its execution, swore that it was filed with the municipal records in the municipal building. It does not appear that any search for this document was made in those records, although an attempt was made to account for the failure to produce it by the introduction of proof that an unsuccessful search was made for it in the provincial records in the provincial building, a part of which had been destroyed by white ants. The evidence of record convinces us that, at the time when the defendant municipality took possession of the property and for a considerable time thereafter, the owner, Juarez, was engaged in an effort to secure relief, through administrative proceedings, from an order of the provincial governor holding him responsible for the alleged shortage of provincial funds; and we are inclined to believe that his claim for relief was well founded. Under all the circumstances we do not think that the evidence sustains a finding that Juarez executed the alleged written contract or that he entered into any agreement to sell or release the property in question to the defendant municipality.

It is not improbable, however, that Juarez consented or at least did not offer any objection to the temporary occupation of his house by the municipality, pending the settlement of his claim for relief from the responsibility

for the alleged shortage, and we think the weight of the evidence fairly sustains a finding to that effect. The precise terms and conditions upon which the municipality took possession do not appear from the evidence, but we are well satisfied that it had no right to remain in possession against the wishes of the owner, after the levy of attachment (embargo) had lost its force. The evidence does not satisfactorily establish the date when this took place, though there can be no doubt that it occurred long prior to the formal extrajudicial demand for possession which it appears was fruitlessly made upon the defendant by the owners of the property not later than the 31st of December, 1902. Plaintiffs are, therefore, clearly entitled to a judgment for possession of the premises described in the complaint, and to damages for the illegal detention thereof since the 1st day of January, 1903.

On the question of the amount of damages we do not think there is sufficient evidence in the record to support a judgment in this court for a specific amount in favor of the plaintiffs. The evidence, wholly fails to establish the allegations as to damages, other than the loss of the rental value of the building throughout the period of its proven illegal occupation by the defendant. There is some formal evidence to the effect that the rental value of the building at the time when the action was tried was P30 per month, but we do not think that this evidence is sufficient to sustain a judgment for that amount throughout the entire period of illegal occupation. As the judgment must be reversed we think that, in the interests of justice, the parties should have a further opportunity to present evidence as to the true rental value of the building during this period.

Twenty days hereafter let judgment be entered reversing the judgment of the trial court, without costs to either party in this instance, and ten days thereafter let the record be returned to the court below where judgment will be entered in favor of the plaintiffs for possession of the premises described in the complaint and for damages for the unlawful detention thereof since January 1, 1903; the amount of the damages, however, to be strictly limited to the fair rental value of the premises since that date, as fixed by the court, after giving both parties an opportunity to present witnesses and to be heard on this question. So ordered.

Arellano, C. J., Mapa, Moreland, and Trent, JJ., concur.

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