

**AGAPITO B. DUCUSIN AND AGAPITO T. DUCUSIN, JR., PETITIONERS,
VS. HON. COURT OF APPEALS, VIRGILIO S. BALIOLA AND LILIA S.
BALIOLA, RESPONDENTS.**

G.R. No. 58286. May 16, 1983

Ponente: GUERRERO, J.

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GUERRERO, J.:

Petition for certiorari praying that the judgment in CA-G.R. No. SP-11473-PR entitled "Virgilio S. Baliola and Lilia S. Baliola vs. Hon. Alfredo L. Benipayo, Judge, CFI of Manila, Branch XVI, Agapito Ducusin and Agapito Ducusin, Jr." be set aside and reversed, the dispositive portion of which reads:

"WHEREFORE, premises considered, the judgment appealed from is hereby MODIFIED. The complaint for ejectment is hereby DISMISSED. Petitioners are hereby ordered to pay private respondent Agapito Ducusin Sr. the sum of P263.29 as their proportionate share for the use of the booster pump. Petitioners are likewise ordered to share in the expenses incurred for the use of the booster pump in the future until the termination of the contract of lease. No costs."

It appears from the records that on February 20, 1975, petitioner Agapito Ducusin leased to private respondent, Virgilio S. Baliola, married to Lilia Baliola, a one-door apartment unit located in 3319-A, Magistrado Araullo St., Bacood, Sta. Mesa, Manila under the contract of lease, Exhibit "A", pertinent stipulations of which state:

"..."

"Now, therefore, for and in consideration of the foregoing premises and covenants and stipulations herein contained in a monthly rental of Two Hundred and Twenty (P220.00) Pesos, the Lessor hereby lease the one-door residential apartment located at No. 3319-A Maj. Araullo St., Bacood, Manila under the following terms, stipulations and conditions:

"1. The lessees agrees to pay to the Lessor on or before the 30th day of each and every month the sum of Two Hundred and Twenty (P220.00) Pesos as rental fee for the subject premises, without need of demand;

"2. The term of this contract shall be in a month to month basis commencing on February 19, 1975 until terminated by the lessor on the ground that his children need the premises for their own use or residence or upon any ground provided in accordance with law;

"3. The Lessees, hereby warrants that the leased premises will be used by him exclusively as residence only and that Lessees shall not directly or indirectly sublease, assign, transfer, convey or in any manner encumber the right of lease or in any part of the leased premises under any circumstance whatsoever;

"4. The Lessees hereby agrees to keep and maintain the premises clean or same in such good and tenantable conditions, and shall comply with all government sanitary regulations and safety, as well as electrical regulations which may be imposed by the government or the lessor himself;

"5. All utilities such as light, water, telephone, gas service, etc. in the leased premises shall be paid for by the

Lessees;

"6. The Lessor hereby undertake to maintain the Lessees in a peaceful enjoyment and possession of the lease premises and warrants that the premises lease by him to the lessees, are in good habitable condition;

"7. That all repairs necessary for the preservation of the wire screens, electric switches and other parts, plumbing fixtures, articles or toilet parts and tubes, paints and payment for labor for repairs shall be for the account of the Lessees, except big major repairs;

"8. That the Lessees agrees to deposit the amount of four hundred and forty (P440.00) pesos rental deposit to the Lessor. The said rental deposit which is equivalent to payment of two months rental fee could be used or be paid for the Lessees last two months stay in the leased premises. . . . (Exhibit "A")." (Italics supplied)

The Baliola spouses occupied the apartment for almost two (2) years, paying its rentals when on January 18, 1977, petitioner Ducusin sent a "Notice to Terminate Lease Contract" to private respondents Baliolas terminating the lease and giving them until March 15, 1977 within which to vacate the premises for the reason that his two children were getting married and will need the apartment for their own use and residence (Exhibit "B"). A second letter dated February 14, 1977 was thereafter sent by Ducusin to respondents Baliolas making an inquiry on any action the latter had taken on the previous notice to terminate the lease contract.

Respondents made no reply to the "Notice to Terminate Lease Contract", Instead, they wrote a letter to the Secretary of National Defense dated February 12, 1977, reporting that Ducusin was intent on evicting them from the leased premises (Exhibit "6").

So on April 14, 1977, petitioners filed an action for ejectment against the Baliola spouses in the City Court of Manila, Branch XVI alleging that having constructed the apartment complex for the use and residence of his children (each to a unit) if and when they decide to marry and live independently and that the apartment unit located at 3319-A Magistrado Araullo St., Bacood, Manila having been allotted to his son, Agapito Ducusin, Jr., the said unit is now needed by Agapito Jr. who is getting married in the month of May, 1977 and that said Agapito Jr. has decided to live independently.

The complaint for eviction further alleged that the lessees have violated the terms of the contract by subleasing the premises; that the lessees have not used the premises solely for residential purposes but have used the same as factory and/or manufacturing premises for their commercial goods; and that they have neglected to undertake repairs of the apartment and the premises according to their agreement.

The lessees denied the allegations of the lessor and claimed in their Answer that the ejectment suit "is a well-planned scheme to rid the defendants and family out of their apartment, and to circumvent the law prohibiting raising the rental of apartments and houses."

The City Court of Manila, Branch XVI, decided in favor of the lessor Ducusin on the ground that the "defendants' contract with the plaintiff has already terminated with the notice of termination sent by the plaintiff to the defendants on the ground that he needs the premises for his own children." The trial court's decision states the following dispositive portion:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, ordering the defendants and all persons claiming possession under them to vacate the premises known as 3319-A Magistrado Araullo St., Bacood, Sta. Mesa, Manila, and surrender possession thereof to the plaintiffs herein; ordering the defendants to pay the plaintiffs the amount of P220.00 monthly as reasonable compensation for the use of the premises starting December 1978 until the premises is finally vacated and possession thereof surrendered to the plaintiffs; ordering the defendants to pay to the plaintiffs the amount of P263.29 as reimbursement for the expenses incurred for the use of the booster pump; ordering the defendants to pay the

plaintiff the amount of P700.00 as reasonable attorney's fees, plus the costs of suit."

The lessees appealed to the Court of First Instance of Manila, Branch XVI, assigning the following errors: (a) That the lower court erred in not finding that the written contract of lease falls within the range of P.D. No. 20; (b) That the lower court erred in finding that the need of the leased premises by the plaintiffs-appellees to be lawful and valid and satisfactorily proved by them; (c) That the lower court erred in awarding damages in the form of reimbursement of the expenses for the use of the booster pump and attorney's fees; and (d) That the lower court erred in not allowing defendants-appellants' counter-claim.

The Court of First Instance of Manila, Branch XVI, affirmed the decision of the City Court of Manila, Branch XVI, based on its findings that: (1) mere allegation of the landlord in his need of the premises for the use of the immediate members of his family "constitutes a cause to eject the tenants . . ."; (2) the marriage of private respondent Agapito Ducusin Jr, was proved by the testimony of private respondent Agapito Ducusin Sr., the latter's son Arturo, photographs depicting married couple and a marriage certificate (Exhibits "F", "G", "H" and "I"); and (3) that petitioners admitted the existence of the verbal agreement to share the expenses incurred for the use of the booster pump.

The lessees, still not satisfied with the CFI decision, went to the Court of Appeals on a petition for review submitting that: "(1) that the respondent CFI of Manila erred in holding that the need of the premises in question by the private respondents is lawful and valid; (2) that the respondent CFI of Manila erred in finding that the need of the premises a quo by the private respondents has been sufficiently proven by them and legally entitle them to judicially eject the petitioners from the premises; (3) that the respondent CFI of Manila erred in ruling that the award by the trial court to private respondents of damages in the form of reimbursement of expenses for the use of the booster pump is proper and legal."

In resolving the appeal, the respondent appellate court proceeded to "examine (the) determination of the questions (1) whether or not an owner of a leased premises can unilaterally terminate the contract of lease under the terms and conditions stated therein; and (2) whether or not the happening of the resolutive condition re: the need of the immediate members of the family of the lessor of the leased premises—has been established by a preponderance of evidence."

Sustaining the validity of the clause in the contract of lease in question, the Court of Appeals held:

"The clause in the contract of lease dated February 20, 1975 at issue in the instant case reads:

...

'2. The term of this contract shall be in a month-to-month basis commencing on February 19, 1975 until terminated by mutual agreement or terminated by the lessor on the ground that his children need the premises for their own use or residence or upon any ground provided for in accordance with law;

...

(Italics supplied.)

"The parties to the contract of lease agreed that the obligations arising from the said contract shall be extinguished due to the following causes: (1) termination of the contract by mutual consent of the parties; (2) when the lessor elects to terminate the contract on the ground that his children need the premises for their own use or residence; and (3) for any cause as provided in accordance with law.

"In the complaint for ejectment, private respondents rely on three causes of action to support their claim that the contract of lease entered into with the petitioners was terminated: (1) violation of the clause in the contract against

sublease; (2) use of the leased premises for commercial purposes and (3) happening of the resolutory condition--need of the leased premises by the lessor's children. The trial court rejected the first two grounds as not being supported by evidence presented but sustained the private respondents' third cause of action.

"The validity of the terms and conditions in a contract is governed by the following Civil Code provisions:

'Art. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.'

'Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.'

...

"The resolutory condition in the contract of lease re: the need of the lessor's children of the leased premises is not a condition the happening of which is dependent solely upon the will of the lessor. The happening of the condition depends upon the will of a third person--the lessor's children. Whenever the latter require the use of the leased premises for their own needs, then the contract of lease shall be deemed terminated. The validity of the said condition as agreed upon by the parties stands."

We agree with the above ruling of the respondent Court and, therefore, affirm the same.

As to the second issue: whether the need of the immediate members of the family of the lessor of the leased premises has been established by a preponderance of evidence, the respondent court ruled against the lessor Ducusin and We quote:

"Upon a careful review of the records of the instant case, We are of the opinion that the private respondents have not proved by a preponderance of evidence the alleged need of the immediate members of his family of the use of the leased premises in dispute.

"Private respondent Agapito Ducusin Sr., alleged in his complaint that he needed the leased premises because his son Agapito Ducusin Jr. was getting married. In the proceedings at the trial Court, he testified that Agapito Ducusin Jr. was getting married on May 1977, hence the latter needed the leased premises (T.S.N., March 7, 1978, pp. 11-12).

"No proof of the marriage of private respondent Agapito Ducusin Jr. was presented from the time of the institution of the case against the petitioners on April 13, 1977 until June 5, 1979 when Arturo Ducusin testified for his father, Agapito Ducusin Sr. In fact, evidence on the alleged marriage of private respondent Agapito Ducusin Jr. was only presented after private respondents filed a 'Motion To Reopen The Case For Reception of Rebuttal Evidence For Plaintiffs.' The evidence consists of photographs of a wedding (Exhibits "J" and "J-1") and a marriage certificate (Exhibit "H"). An alleged letter of the private respondent Agapito Ducusin Jr. where it stated that the latter intended to settle in the Philippines instead of Canada where he was presently residing with his wife (Exhibit "F" & "G") was also presented.

"To give weight and credence to the evidence presented by the private respondents on the need of the landlord's children to occupy and use the leased premises runs counter to the time-honored rule against hearsay evidence.

"Private respondent Agapito Ducusin Jr. though named a plaintiff in the case at bar never appeared during the proceedings in the trial Court. Even his presence in the Philippines in 1977 when the case was instituted remains subject to conjecture. His father, private respondent Agapito Ducusin Sr., merely intimated during the trial Court proceedings that the younger Ducusin applied as an immigrant to Canada (T.S.N., March 7, 1978, pp. 11-12).

"The letters of private respondent Agapito Ducusin Jr. to his brother Arturo Ducusin; photographs of the alleged wedding of the former and the certificate of marriage of Agapito Ducusin Jr. are all self-serving. Petitioners are entitled to cross-examine the person who allegedly made the statements in the letter following the rulings in *Pastor v. Gaspar*, 2 Phil. 529; *U.S. v. Caligagan*; 2 Phil. 433; *U.S. v. Manalo*, 6 Phil. 364. The evidence presented to prove the alleged marriage of Agapito Ducusin Jr. should be excluded in accordance with the provisions of Rule 130, Sec. 30 of the Rules of Court which states:

'Sec. 30. Testimony generally confined to personal knowledge; hearsay excluded: A witness can testify only to those facts which he knows of his own knowledge; that is, which is derived from his own perception, except as otherwise provided in these rules.'

"Moreover, even if We are satisfactorily convinced of the marriage of private respondent Agapito Ducusin Jr., it does not establish the alleged need of the latter to use the leased premises presently occupied by the petitioners. Private respondent Agapito Ducusin Sr. did not show that the one-door apartment leased to the petitioners was the only place available for the use of his son, Agapito Ducusin Jr. On the contrary, petitioner Virgilio Baliola testified that private respondent Agapito Ducusin Sr. informed him before the action was instituted against him that another apartment unit, No. 3319-D similarly owned by the latter would soon be vacated (T.S.N., July 27, 1978, pp. 17-18)."

According to the petitioners, the above ruling of the Court of Appeals is erroneous and should be reversed because "I. The contract expired by the termination of the period of the lease and upon notice to vacate, irrespective of the truth or not of petitioners' need of the subject premises; II. The evidence of petitioners on the third cause of action was sufficient to show their need of the premises for their personal use and occupation; and III. There being a provision in the contract on the third cause of action, the house rental laws have not been violated." (Petition, p. 11, Records)

We find for, the petitioners. We do not agree with the holding of the respondent court that the petitioners have not proved by a preponderance of evidence the alleged need of the immediate members of his family for the use of the leased premises, which holding is grounded on the assumption that "to give weight and credence to the evidence presented by the private respondents on the need of the landlord's children to occupy and use the leased premises runs counter to the time-honored rule against hearsay evidence." (CA Decision, p. 108, Records)

The Court of Appeals rejected the letters of petitioner Agapito Ducusin, Jr. to his brother, Arturo Ducusin, the photographs of the wedding of Ducusin Jr. and the certificate of marriage of Ducusin Jr. and Adela Villacorta as self-serving, citing Sec. 30, Rule 130 of the Rules of Court which provides that the witness can testify only to those facts which he knows of his own knowledge. And since the marriage was not proved, the appellate court reasoned out that the need for the use of the leased premises by Ducusin Jr. was not established.

We reject this holding of the respondent court. In the first place, as pointed out by the petitioners, the testimony of petitioner Agapito Ducusin, Sr. should have been given weight by the appellate court because he testified that his son Agapito Jr got married to Adela Villacorta on November 25, 1978 in Edmonton, Alberta, Canada at the St. Anthony Church and that he knows this fact of marriage since he was present during the wedding ceremony and pictures marked Exhibits "H", "I", "J" and "J-1" were taken of the wedding party after the ceremony and wherein he identified himself in the, picture (Exh. "J") as "the gentleman in dark jacket on the right side" (t.s.n., June 5, 1979, pp. 19-21; pp. 177-179, Records). And with the testimony of Arturo Ducusin, a brother of Agapito Jr., which may be considered under Rule 130, Sec. 33 as an act or declaration about pedigree, the word "pedigree" including relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives, as well as the presentation of the marriage certificate of Agapito Ducusin, Jr. and Adela Villacorta (all of which evidence were noted, admitted and considered in the decision of

the case before the CFI of Manila, Branch XVI (p. 87, Records) and in the decision of the City Court of Manila, Branch XVI (p. 62, Records) both holding that the marriage has been sufficiently proved, We rule that the Court of Appeals gravely erred in excluding the evidence described above and presented to prove the marriage of Agapito Ducusin, Jr.

We likewise conclude that the intention to use the leased premises as the residence of Ducusin Jr. has been satisfactorily and sufficiently proved by clear, strong, and substantial evidence found in the records of the case. The testimony of the petitioner, Ducusin Sr., that his son needs the leased premises as he was getting married and did in fact got married, for which reason petitioner sent the "Notice to Terminate His Contract" (Exh."B"); the testimony of Arturo Ducusin that he had an overseas telephone talk with his brother Agapito Jr. informing that the latter was coming home and that he and his wife were preparing their documents and arriving within the month (t.s.n., pp. 13, 17, June 5, 1979; p. 15, Records) and the documentary evidence (Exh, "F" and "G") which is the letter of the private respondent Agapito Ducusin, Jr. where it stated that he intended to settle in the Philippines instead of Canada where he was presently residing with his wife (CA decision, p. 108, Records) - all these evidence clearly and competently prove the intention of petitioner Agapito Ducusin, Jr. to reside in the Philippines and use the leased premises for his residence and his wife.

The contention of the petitioner that the contract of lease in question is for a definite period, being on a month-to-month basis beginning February 19, 1975 and is, therefore, not covered by P.D. No. 20, is correct. The rule We laid down in *Rantael vs. Court of Appeals and Teresa Llave*, L-47519, April 30; 1980, 97 SCRA 453, is squarely on all fours with the case at bar and is controlling. The Supreme Court said, and We quote:

"1. The source of disagreement between petitioner Rantael and respondent Llave relates to the following quoted provisions of the Agreement on Occupancy of Apartment dated August 1, 1974:

'The undersigned TENANT hereby agrees with Mrs. Teresa F. Llave as owner, to use, occupy and live in the latter's apartment at Stanford, Quezon City, known as Door 51-A on a month to month basis, beginning today, under the following terms and condition until the premises, (are) completely vacated . . .'

The aforequoted provisions of the Agreement on Occupancy of Apartment cannot but be read as providing for a definite period for the lease. Period relates to 'length of existence; duration' or even a 'series of years, months or days in which something is completed.' Definite means 'having distinct or certain limits; determinate in extent or character; limited; fixed.' A definite period, therefore, refers to a portion of time certain or ascertainable as to its beginning, duration and termination. As already stated above, the parties further expressly agreed that - 'upon thirty (30) days notice, either party may terminate this agreement, each fulfilling their respective obligations herein agreed.

In the case at bar, the lease entered into between petitioner Rantael and respondent Llave commenced, in accordance with the provisions of the Agreement on Occupancy of Apartment, on August 1, 1974, the date of execution of the said Agreement, considering that the parties employed the phrase 'beginning today' with reference to the starting point of the period during which petitioner Rantael, would have use and occupancy of the premises of unit 51-A. As to the duration and termination of the aforementioned contractual relations, the parties used the phrase 'on a month to month basis' in the Agreement with reference to the length of time during which petitioner Rantael would have use and occupancy of the leased premises. And month here should be construed, in like manner as in the interpretation of laws pursuant to the provisions of Article 12 of the Civil Code of the Philippines, there being no reason to deviate therefrom, as a period composed of thirty days. The contractual relations between petitioner Rantael and respondent Llave ceased after the expiration of the first thirty days reckoned from August 1, 1974 but continued for the next thirty-day period and expired after the last day thereof, repeating the same cycle for the succeeding thirty-day periods, until the said respondent Llave exercised her

express prerogative under the agreement to terminate the same.

...

"However, by express exception of P.D. No. 20, judicial ejectment lies 'when the lease is for a definite period' or when the fixed or definite period agreed upon has expired. The lease in the case at bar having a definite period, it indubitably follows that the exception, rather than the general rule, applies and, therefore, respondent Llave's right to judicially eject petitioner Rantael from the premises may be duly enforced. This has been the consistent administrative interpretation of the Office of the President, *supra*. Therefore, no error was committed by respondent appellate court . . ."

As to the holding of the respondent court that petitioner Ducusin Sr. "did not show that the one-door apartment leased to the petitioners was the only place available for the use of his son, Agapito Ducusin, Jr." on the contrary, We find in the records evidence that out of the eight doors apartment building belonging to the petitioner Ducusin Sr., three doors, now 31 years old, became untenable due to wear and tear and the remaining five doors were all occupied by tenants; first door, 3319, is occupied by Mr. Coluso, 3319-A by the Baliola spouses, 3319-B by Mr. & Mrs. Magsano, 3319-C by Mr. & Mrs. de los Santos, and 3319-D by Videz, (pp. 13-14, *t.s.n.*, July 27, 1978; see p. 14, Records). From this evidence may be deduced that there is no other place available for the use and residence of petitioner's son, Agapito Ducusin, Jr. Assuming that Agapito Ducusin, Sr. informed his tenant Virgilio Baliola that another apartment unit No. 3319, would soon be vacated, the alleged vacancy is nearly speculative and there is no showing that it actually became vacant and available.

There is, therefore, no factual and legal basis for the respondent court's decision dismissing the complaint for ejectment and reversing the findings of facts of both the City Court of Manila, Branch XVI, and the Court of First Instance of Manila, Branch XVI.

And that brings Us to the last point in the review of the case at bar. Generally, the findings of fact by the Court of Appeals are deemed accepted as the basis for review of the appellate court's decision. But this rule is not without exception such as shown in the case before Us where the Court of Appeals reversed the findings of fact made by the trial court (the City Court of Manila) and also the Court of First Instance, by excluding evidence supposedly hearsay when they are not pursuant to the rules of evidence, by ignoring evidence on record that are competent, clear and substantial and by misapprehending the facts, thereby making manifest the commission of grave abuse of discretion on the part of the respondent appellate court and so warrants and justifies a review not only of the law but also the facts.

We reiterate Our doctrine in *Tolentino vs. De Jesus*, 56 SCRA 167, where it was ruled that the findings of facts of the Court of Appeals are not conclusive where there is grave abuse of discretion; the judgment is based on misapprehension of facts; the findings of facts of the Court of Appeals are contrary to those of the trial court or premised on the absence of evidence and is contradicted by evidence on record; the conclusion is a finding grounded entirely on speculation, surmise and conjectures; and the inference made is manifestly mistaken. These are the exceptions to the general rule. The instant petition is such an exception.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the respondent Court of Appeals subject of this review is hereby REVERSED and SET ASIDE. The decision of the City Court of Manila, Branch XVI and affirmed on appeal to the Court of First Instance of Manila, Branch XVI is hereby reinstated and restored, with costs in favor of petitioners.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., De Castro and Escolin, JJ., concur.
Abad Santos, J., no part.

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