

MERCEDES P. GUASCH, PETITIONER, VS. HON. COURT OF APPEALS AND ATTY. ARTURO L. RODRIGUEZ, RESPONDENTS.

G.R. No. 59075. July 05, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review of the decision dated August 28, 1981 of the Court of Appeals in CA--G.R. No. 66145-R, entitled "Arturo L. Rodriguez vs. Mercedes Guasch," affirming the decision of the Court of First Instance of Rizal, which ordered the petitioner to vacate the private respondent's property but set aside the order for reimbursement of the petitioner's insurance premiums and expenses for repairs of the building.

The private respondent, Arturo L. Rodriguez, owned a building which stood on his 1,277-square-meter land on Samson Road, Caloocan City.

On May 27, 1968, the petitioner leased Rodriguez's land and building for a nominal monthly rental under a contract entitled "Lease of Land" (Exh. A) wherein the petitioner bound herself to build within three (3) years from the date of the contract, a new building on the land which would become the property of the lessor, after the expiration of twenty (20) years from the date of their agreement, without any obligation to reimburse the lessee therefor. The pertinent provisions of the contract read as follows:

"3. That notwithstanding the existing building, the LESSEE may have same demolished and constructed in lieu thereof a new two-storey concrete reinforced building worth not less than P200,000 as shown by the plan, photostat copy marked as Annex 'A' and specifications of materials marked as Annex 'B' and made an integral part hereof;

"4. That the said building be constructed in accordance with the government rules and regulations with no less than one first class toilet and bath on the second floor and on the ground floor one of first class toilet and bath and another of the second class and made strictly in accordance with the specification stated therein;

"5. This building shall be finished not later than three (3) years from date hereof and the LESSOR or his legal representative may from time to time check on the construction and any deviation from the plan and specification that may be found shall be changed and so made strictly in pursuance to (sic) the agreement herein." (Emphasis supplied; Record on Appeal, pp. 8-9; pp. 33-34, Rollo.)

They also agreed that the new building would be insured at the lessee's expense for the benefit of the lessor:

"9. The building shall be insured by the LESSEE at her expense for P50,000 and in case of damage or fire the proceeds shall be payable to the LESSOR herein and in which amount will be expended for the repair of the damaged building. The insurance Company underwriting must be acceptable to the LESSEE herein." (Underlining ours; Record on Appeal, pp. 9-10.)

The parties further agreed that failure of the lessee to pay three successive monthly rentals, or any violation of the lease covenants, would be a ground for the cancellation of the lease, in which event, the building and all the

improvements introduced by the lessee would be forfeited to the lessor without payment of indemnity to the lessee.

The lessee failed to comply with her obligation to construct a new two-storey reinforced concrete building in accordance with the plan (Ex. A-1). What she built were three (3) cheap accessoria-type tenements of wood and stone worth only P50,000, and completely different from the approved plans and specifications. Moreover, although she did insure the building, the beneficiary of the policies was herself or the "Mercedes Commercial Enterprises and Automotive Services," (p. 74, Record on Appeal) instead of the lessor. Rodriguez's demands for the delivery of the fire insurance policies to him were ignored by her. On February 1, 1977, the lessor advised her in writing of the termination of the lease (Exh. D).

On February 22, 1977, Rodriguez filed a complaint for rescission of the lease contract and to recover possession of the leased premises, with damages in the Court of First Instance of Rizal.

Petitioner filed a motion to dismiss the action, arguing that the Court of First Instance did not have jurisdiction over the case, as it was essentially one for ejectment, hence, cognizable by an inferior court. After her motion to dismiss was denied, she filed an answer denying that she had violated any conditions of the lease.

On October 8, 1979, the trial court rendered a decision finding that the petitioner (then the defendant) violated two conditions of the lease, namely: (1) her obligation to construct a new two-storey reinforced concrete building in accordance with the plan (Exh. A-1); and, (2) her obligation to procure insurance for the benefit of the lessor, plaintiff Rodriguez. The court declared the plaintiff entitled to cancel the lease contract.

The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered declaring the lease contract entered into by the parties on May 27, 1978 (sic) terminated and cancelled as of February 1, 1977 and all improvements constructed and existing on the leased premises are hereby declared as belonging to the plaintiff from the aforementioned date. Defendant is directed to immediately deliver the possession of these improvements to the possession of the plaintiff. She is further required to deliver immediately to the plaintiff all the rentals she received corresponding for the period from February 1, 1977 up to actual delivery less all rentals she paid to plaintiff for the land, as well as all expenses [incurred] by her for the procurement of the insurance coverage and for the repair of the buildings from February 1, 1977 up to the present. Defendant is furthermore condemned to pay plaintiff the amount of P1,000 as attorney's fees and P1,000 as liquidated damages. The counterclaim is dismissed. Costs in this instance against defendant." (p. 10, Rollo.)

Both parties appealed, the lessor's appeal being limited only to the portion of the judgment ordering him to reimburse the lessee for the insurance premium paid and for repairs made on the building after February 1, 1977.

On August 28, 1981, the Court of Appeals rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is hereby modified in the sense that plaintiff-appellant should not be required to reimburse defendant-appellant's expenses incurred by the latter for the procurement of the insurance coverage and for the repair of the building from February 1, 1977. In all other respects, the decision appealed from is hereby affirmed, with costs against defendant-appellant." (p. 48, Rollo.)

After her motion for reconsideration of the decision was denied by the Appellate Court in a Resolution dated December 2, 1981, Guasch filed this petition for review wherein she assigned eight (8) errors against the Appellate Court. However, the resolution of those alleged errors hinge upon the lone factual issue of whether or not she violated the conditions of the lease agreement.

The Appellate Court's finding that she did is supported by the evidence, and its conclusion that her lessor was

entitled to rescind the lease contract with damages is in accord with applicable laws and jurisprudence.

Article 1191 of the Civil Code provides that "the injured party may choose between the fulfillment and rescission of the obligation, with payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible." The rescission of the contract as sought by the private respondent is therefore legally justified (*Siy vs. Court of Appeals*, 138 SCRA 536; *Ayson-Simon vs. Adamos*, 131 SCRA 439).

The court of first instance, now the regional trial court, had jurisdiction over the complaint for rescission of the lease contract and, for a judicial declaration that as of February 1, 1977, when the contract was terminated, the plaintiff (lessor) became the owner of the building constructed by the defendant on the leased premises. The complaint neither alleged forcible entry by the defendant upon the premises nor illegal detainer of the same, for as pointed out by the Court of Appeals, Rodriguez was not yet the owner of the building occupied by the petitioner. Hence, the action did not come within the jurisdiction of an inferior court. Courts of first instance (now regional trial courts) have original jurisdiction in civil actions involving the title to or possession of real property or any interest therein except actions for forcible entry and unlawful detainer (Sec. 44[b], Judiciary Law and Sec. 19[2] of Batas Pambansa Blg. 129).

WHEREFORE, the petition for review is denied for lack of merit. The appealed judgment is affirmed in toto, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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