

ARTURO P. SANTOS AND ADELINA Y. SANTOS, PETITIONERS, VS. THE COURT OF APPEALS AND AURORA GUTIERREZ, RESPONDENTS.

G.R. No. 60210. March 27, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal by certiorari from the decision of the then Court of Appeals in CA-G.R. No. SP-13056, affirming the one rendered by the then Court of First Instance of Manila, Branch XVI, in Civil Case No. 138472.

Records show that herein private respondent Aurora Gutierrez instituted an unlawful detainer case in the then City Court of Manila against herein petitioners Arturo P. Santos and Adelina Y. Santos on grounds that she needs the premises for her personal use and the necessity of repairs thereon, and that the petitioners were delinquent in the payment of rentals.

In their Answer with Counterclaim, petitioners, among others, admitted that they are "the legitimate tenants and/or lessees of the subject apartment with the present rental rate of P250.00 a month on a month-to-month contract of lease." (p. 62, Rollo)

After trial, the City Court rendered judgment -

"Premises considered, this Court hereby renders judgment for the plaintiff and against the defendants and hereby orders the defendants and all persons claiming under them to vacate the premises in question known as No. 1836 Cavite St., Sta. Cruz, Manila and surrender its possession to the plaintiff.

"The defendants are further ordered to pay the plaintiff P2,500.00 as rentals for the period December 1978 through September 1979, and, further to pay the plaintiff rentals at the rate of P250.00 per month from October 1979 until such time as possession of the premises in question shall have been restored to the plaintiff minus whatever amounts may have been already received by the plaintiff from deposits made in Court. The defendants are further ordered to pay the plaintiff P1,000.00 as and for attorney's fees plus costs of suit. All claims by the defendants against the plaintiff are dismissed, for lack of merit." (p. 74, Rollo)

Petitioners appealed the foregoing judgment to the then Court of First Instance which found the same "in accordance with both the evidence and the law" and affirmed the decision. Thereafter, petitioners went to the Court of Appeals on a petition for review and the latter, on January 29, 1982, rendered judgment as follows:

"PREMISES CONSIDERED, there being substantial evidence to support the decision under review, the instant petition is hereby DENIED DUE COURSE and is resultantly hereby DISMISSED." (p. 22, Rollo)

Hence, this petition for review on certiorari, the Santosos submitting that (1) they were never delinquent in the payment of rentals only the collector failed to get the money and since they whereabouts of private respondent was unknown, they were forced to deposit them to the bank; (2) the mere sending of a notice to vacate by registered mail which the postal clerk refused to deliver to them for the reason of wrong name cannot be considered sufficient compliance with the jurisdictional requirement of notice; (3) they have been leasing the

apartment for 28 years and are therefore entitled to preferential right to purchase their unit under Presidential Decree No. 1517; (4) there is no real need of the premises by private respondent; (5) it was an error to order their ejectment without complying with the mandatory requirements of Batas Pambansa Blg. 25 and the ruling in *Rantael vs. Llave*, 97 SCRA 453; (6) respondent court erred in stating that a contract of lease of residential apartment involving a rental of P250.00 a month may be terminated at the end of the month without default on the part of the lessee; (7) there was improper change of theory on appeal on the part of private respondent; and, (8) there was error in affirming the decision of the lower court.

We find no merit in the petition.

1. Petitioners, in their "Answer with Counter claim" (Annex "B", Petition, page 62, Rollo) admit that they are "the legitimate tenants and/or lessees of the subject apartment with the present rental rate of P250.00 a month on a month-to-month contract of lease." (Italics supplied).

The aforequoted provision of the agreement on occupancy of the apartment cannot but mean as providing for a definite period of the lease. The parties expressly agreed that upon proper notice, one may terminate the agreement. As stated in *Rantael vs. Court of Appeals*, 97 SCRA 453, 459 -

"x x x The contractual relations between petitioner Rantael and respondent have 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 have exercised her express prerogative under the agreement to terminate the same."

2. Paragraph 1 of Article 1673 of the Civil Code is an exception to Section 4 of Presidential Decree No. 20. Said Section 1 of Article 1673 provides -

"Art. 1673. The lessor may judicially eject the lessee for any of the following causes:

(1) When the period agreed upon, or that which is fixed for the duration of lease under articles 1682 and 1687, has expired;"

Thus, 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 follows that private respondent's right to judicially eject petitioners from the premises may be enforced. As aptly stated by respondent Court of Appeals, "[e]ven on the strength alone of the *Rantael* ruling, the petitioners can be lawfully ejected, regardless of the motive or intent of the lessor-private respondent. We thus see no point in discussing the other issues raised except to state that P.D. No. 1517, in referring to the pre-emptive or redemptive right of a lessee speaks only of urban land under lease on which a tenant has built his home and in which he has resided for ten years or more. If both land and the building belong to the lessor, the right referred to hereinabove does not apply." (p. 22, Rollo)

ACCORDINGLY, judgment is hereby rendered DISMISSING the instant petition for review and AFFIRMING the decision of respondent Court of Appeals. With costs.

SO ORDERED.

Plana, Escolin and Gutierrez, Jr., JJ., concur.

Melencio-Herrera, J., (Acting Chairman), see dissenting and concurring opinion.

De la Fuente, J., no part.

DISSENTING AND CONCURRING OPINION

MELENCIO-HERRERA, J.:

Private respondent Aurora Gutierrez, an apartment owner, instituted an Unlawful Detainer suit against petitioners-lessees, the Santos spouses, on the grounds of personal use, need for repairs of the leased premises, and delinquency in payment of rentals by petitioners.

In paragraph 2 of their Answer with Counterclaim, petitioners stated that they are "the legitimate tenants and/or lessees of the subject apartment with the present rental rate of P250.00 a month on a month-to-month contract of lease." In paragraph 11 of their Special and Affirmative Defenses, however, they also averred that they principally rely on their verbal month-to-month contract.

The judgment of the City Court ordering petitioners to vacate was affirmed by the Court of First Instance as well as by respondent Appellate Court, the latter on a petition for review.

The present appeal by Certiorari seeks a reversal of the ejectment separately adjudged by those three Courts.

The majority opinion sustains the judgment of respondent Appellate Court on the principal ground that the lease is for a definite period and, therefore, outside the pale of Presidential Decree No. 20, and relying on our ruling in *Rantael vs. Court of Appeals, et al.*, 97 SCRA 453 (1980).

I believe, however, that, upon the facts, the lease involved herein is not for a definite period, the period being determined, not by any agreement of the parties, but pursuant to Article 1687 of the Civil Code, which provides:

"If the period for the lease has not been fixed, it is understood to be x x x from month to month, if it (the rent agreed upon) is monthly."

Consequently, the subject lease falls squarely within the purview of Article 1673 of the Civil Code, the effects of which were suspended by Section 6 of Batas Pambansa Blg. 25 (formerly Section 4 of P.D. 20), reading thus:

"SEC. 6. Application of the Civil Code and Rules of Court of the Philippines. - Except when the lease is for a definite period, the provisions of paragraph (1) of Article 1673 of the Civil Code of the Philippines insofar as they refer to residential units covered by this Act shall be suspended during the effectivity of this Act, but other provisions of the Civil Code and the Rules of Court on lease contracts, insofar as they are not in conflict with the provisions of this Act, shall apply."

The related provision, paragraph (1) of Article 1673 of the Civil Code, provides:

"ART. 1673. The lessor may judicially eject the lessee for any of the following causes:

(1) When the period agreed upon, or that which is fixed for the duration of leases under articles 1682 and 1687, has expired;"

Construing the foregoing provisions together, it results that even if a month-to-month lease under Article 1687 of the Civil Code expires, it cannot be a ground for ejectment in view of the suspension of Article 1673(1) by Batas Pambansa Blg. 25. As we have succinctly held in the following cases:

"Construing Sec. 4 of Presidential Decree No. 20 in relation to Art. 1673 par. 1 and Art. 1687 of the Civil Code, it is clear and explicit that Presidential Decree No. 20 suspends paragraph (1) of Article 1673. Hence, the petitioner cannot be ejected at the expiration of the period provided under Article 1687 of the Civil Code." (*Salaria vs. Buenviaje*, 81 SCRA 722, 727 (1978).

x x x

"x x x The only ground, therefore, apparently available to plaintiffs to justify their action is the fact that the duration of the lease as fixed by Article 1687 has already expired, or expires each month and may be terminated at the end of said month. But this is excepted as ground for ejectment by Sec. 4 of Republic Act No. 6359. Under said section, the provision of the first paragraph of Article 1673 is suspended when the period of the lease has not been agreed upon but has been only fixed in accordance with Article 1687 and said period has expired. x x x It should be noted that in the opposition to such motion, Presidential Decree No. 20 which suspends court actions for ejectment for leases covered by the same was relied upon by private respondents." (Gutierrez vs. Cantada 90 SCRA 1, pp. 4-5 (1979).

The Rantael doctrine is not invocable because of the striking difference that the lease in that case was embodied in a written "Agreement on Occupancy of Apartment" by which terms, "the lessee agreed to use and live in the apartment. On a month-to-month basis, beginning today". Hence, our ruling therein that a lease contract on a month-to-month basis provides a definite period and may be terminated at the end of any month. That was a conventional lease as contrasted to the legal lease herein. In the case at bar, as found by the Court of First Instance, there was no formal agreement between private respondent and petitioners, "it appearing that the former merely acquiesced to the latter's continued occupation of the property in question" after private respondent had purchased the premises from the pre-vious owner. The subject lease, therefore, cannot be said to be a lease for a definite period, determined as that period is by Article 1687 of the Civil Code, for, otherwise, there would hardly be any occasion for the application of Section 6 of Batas Pambansa Blg. 25. As a matter of fact, the Rantael case specifically states that judicial ejectment would not lie even though the periods fixed under Article 1687 may have expired.

"In accordance with the foregoing, (par. [1] of Arti-cle 1673) section 4 of Presidential Decree No. 20 should be understood to mean that, as a general rule, the lessor may not judicially eject the lessee upon the expiration of the period determined in accordance with the provisions of Articles 1682 and 1687 of the Civil Code. x x x x x x (Article 1687 provides that '[i]f the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid, daily,' and further provides that the courts may fix a longer term for the lease after the lessee has occupied the premises for certain periods of time). Thus, judicial ejectment would not lie even though the periods fixed under the said Articles may have expired." (Rantael vs. Hon. CA, et al., 97 SCRA 453, 460 (1980).

Be that as it may, I concur in the ejectment of peti-tioners for, as held in Baens vs. Court of Appeals, et als., (G.R. No. 57091, November 23, 1983), even if the month to month arrangement is on a verbal basis, the lease is considered terminated at the end of the month, if statutory grounds to eject under Section 5 of Batas Pambansa Blg. 25 exist. In this case two such grounds are present, parti-cularly, (1) arrears in the payment of rentals (Sec. 5[b], B.P. Blg. 25) as found by the City Court, which held peti-tioners "culpably delinquent"; and (2) the need of the lessor to make necessary repairs, there being already an order of condemnation by appropriate administrative autho-rities (Sec. 5[e] B.P. Blg. 25), which petitioners admit having received.

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