

SPOUSES MARCIANO BANDOY AND SEGUNDINA BANDOY, PETITIONERS, VS. HON. COURT OF APPEALS AND DOMINGO P. EMPAYNADO, RESPONDENTS.

G.R. No. 77133. July 19, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is an appeal by certiorari of the decision (pp. 27-31, Rollo) of the Court of Appeals dated January 13, 1987 in CA-G.R. SP. No. 09391 entitled "Spouses Marciano and Segundina Bandoy, Petitioners, vs. Hon. Luis L. Victor, in his capacity as Presiding Judge, Branch XCVI, RTC, and Domingo Empaynado, Respondents," which affirmed the decisions of the Regional Trial Court, National Capital Region, Branch XCVI, Quezon City, dismissing the herein petitioners' complaint for ejectment on the ground of lack of jurisdiction due to the lack of demand to pay rentals and to vacate the premises.

The antecedent facts of the case are as follows:

Spouses Marciano and Segundina Bandoy herein petitioners, were lessees of a residential house and lot owned by the University of the Philippines and located at No. 88-D, phase 4, Pook Amorsolo, U.P. Campus, Quezon City.

Sometime in April 1984, petitioners sublet certain spaces of the property to Eduardo Empaynado, herein private respondent, for a monthly rental of P550.00. Empaynado failed to pay the rental for the month of July, 1985. Upon demand by petitioners, Empaynado still failed and refused to pay.

Petitioners brought the matter to the office of the barangay captain for settlement, but to no avail. On August 20, 1985, a certification to file action against Domingo Enpaynado for ejectment and non-payment of house rentals including light and water (Annex "A" to the petition, p. 10, Rollo) was issued by the office of the barangay captain.

On November 26, 1985, petitioners filed a complaint for ejectment against Empaynado and attached thereto the certification to file action issued by the barangay captain. The case was filed with the Metropolitan Trial Court of Metro Manila, Quezon City and docketed as Civil Case No. XXXV-48898.

In his answer, Enpaynado admitted that he did not pay the rentals since July 1985 but denied that there was a demand to vacate and pay made upon him by spouses Marciano and Segundina Bandoy.

After trial, judgment was rendered in favor of the spouses. The decision, dated March 6, 1986 reads, in part:

"x x x.

"At any rate, the court is of the view that a demand to vacate before the barangay court is a substantial equivalent of the required extrajudicial demand to pay and vacate required by the Rules of Court prior to the filing of an ejectment case court.

"x x x.

"ACCORDINGLY, judgment is hereby rendered in favor of plaintiff spouses Marciano and Segundina Bandy ordering the defendant Domingo Ermpaynado and all persons claiming rights under him to vacate the residential house or extension thereof at the lot known as No. 88-D, Phase 4, Pook Amorsolo, U.P. Campus and to surrender the same peacefully to the plaintiffs. The defendant is likewise required to pay all unpaid rentals at the rate of P550.00 a month from July 1985 up to the time the defendant vacates the premises at bar; and to pay the plaintiff P700.00 as reasonable attorney's fee and the costs of suit.

"SO ORDERED." (pp. 21-22, Rollo)

Domingo Ermpaynado appealed the decision to the Regional Trial Court which rendered a decision dated June 2, 1986 dismissing the case for ejectment for lack of jurisdiction on the part of the trial court. The decision reads:

"ACCORDINGLY, in the light of the foregoing disquisition, on the ground of lack of jurisdiction, the decision appealed from is hereby set aside and this case ordered dismissed, without pronouncement as to costs.

"SO ORDERED." (p. 25, Rollo)

Spouses Marciano and Segundina Bandy filed a petition for review of the decision of the Regional Trial Court the Court of Appeals. In a decision promulgated on January 14, 1987, the Court of Appeals dismissed the case also for lack of jurisdiction on the part of the trial court. The decision reads, in part:

"x x x.

"And where the Metropolitan Trial Court did not acquire jurisdiction, the above jurisprudence would hold and all we can do is to dismiss the case for lack of jurisdiction.

"WHEREFORE, there having been no error committed by the Regional Trial Court, the petition for review is hereby DENIED.

"SO ORDERED." (pp. 30-31, Rollo)

Not satisfied with the decision of the Court of Appeals, petitioners come to Us on a lone assignment of error, that:

"THE HONORABLE COURT OF APPEALS ERRED IN DENYING THE PETITION FOR REVIEW AND IN AFFIRMING THE RULING OF THE REGIONAL TRIAL COURT THAT THE METROPOLITAN TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE CASE."

It is the contention of petitioners that no further demand to vacate was made by petitioners after the certification to file was issued by the Barangay captain for the reason that the case was already certified for court action. Under this situation, any further demand to vacate was merely repetitive and unnecessary.

There is no merit in this contention.

It is not disputed that the complaint contains no allegation that there was a prior demand to vacate made by the petitioners upon private respondent. It is a settled rule that "where the complaint contains no allegation that a demand had been made upon the defendant to vacate the premises but only an allegation that a demand was made for payment of the rentals agreed upon, it is held that such allegation is insufficient to confer jurisdiction upon a justice of the peace court" (Casilan vs. Tomassi, et al., 10 SCRA 261, 264; Santos vs. Vivas, 96 Phil, 538, 540). The certification issued by the office of the barangay captain is not conclusive as to the jurisdiction of the court to which the case was subsequently filed. What was certified by the barangay captain was that no settlement was reached by the parties in the barangay level. It did not certify that all the requisites for the filing of an unlawful detainer case had been complied with.

In the case of *Co Tiamco vs. Diaz*, L-7, January 22, 1946 (75 Phil. 672), relied upon by petitioners, there was no allegation in the complaint that a notice to quit or vacate was made upon the defendants. However, during the presentation of evidence, plaintiffs offered Exhibit "A" as evidence, which is a notice to quit alleged to have been served upon defendants prior to the filing of the action. This was objected to by the defendants and the objection was sustained by the trial court. The defendants filed with the Court of First Instance a petition for mandamus to compel the municipal court judge to admit Exhibit "A". By virtue of a writ of mandamus issued by the Court of First Instance, the evidence was admitted. In that case, it was held that:

"even supposing without conceding, that the complaint is deficient (in not alleging the notice to quit) the deficiency was cured by the evidence," (p. 679, *supra*)

But, the above case of *Co Tiamco* cannot be applied in this case. In the *Co Tiamco* case, it was proven that there was indeed a notice to quit or demand to vacate served upon the defendants. The notice to vacate was offered and admitted in evidence. In the case at bar, the complaint was defective because of its failure to allege that there was a prior demand to vacate. The defect was not cured because no evidence of a prior demand to vacate was presented in the trial court. The affidavit of Empaynado relied upon by the trial judge to the effects that: "na ako ang tinutukoy ni Marciano Tamis Bando'y dahil di umano'y sa di magandang asal namin na gusto niyang paalisin sa kanyang extension." does not prove that the spouses demanded that he vacate the premises. What Empaynado admitted in the said affidavit was that the spouses intended to expel him out of the premises ("gusto niyang paalisin") but has not actually or definitely demanded that he vacate the premises. An intention to oust is different from an actual or definite demand to vacate. It is the latter which confers jurisdiction upon the municipal court.

ACCORDINGLY, the petition is DENIED. The decision of respondent Court of Appeals is affirmed. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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