

THE MUNICIPALITY OF CAVITE, PLAINTIFF AND APPELLANT, VS. HILARIA ROJAS AND HER HUSBAND TIUNG SIUKO, ALIAS SLWA, DEFENDANTS AND APPELLEES.*G.R. No. 9069. March 31, 1915*

Ponente: TORRES, J.

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Appeal filed through bill of exceptions by the Attorney-General, representing the plaintiff municipality of Cavite, from the judgment of March 27, 1913, whereby the Honorable Herbert D. Gale, judge, dismissed the complaint with costs against the plaintiff party, declaring that the said municipality had no right to require that the defendants vacate the land in question.

By an instrument dated December 5, 1911, afterwards amended on March 14, 1912, the provincial fiscal of Cavite, representing the municipality of that name, filed a complaint in the Court of First Instance of said province alleging that the plaintiff municipal corporation, duly organized and constituted in accordance with Act No. 82, and as the successor to the rights said entity had under the late Spanish government, and by virtue of Act No. 1039, had exclusive right, control and administration over the streets, lanes, plazas, and public places of the municipality of Cavite; that the defendants, by virtue of a lease secured from the plaintiff municipality, occupy a parcel of land 93 square meters in area that forms part of the public plaza known under the name of Soledad, belonging to the municipality of Cavite, the defendants having constructed thereon a house, through payment to the plaintiff for occupation thereof of a rental of P5.58 a quarter in advance, said defendants being furthermore obligated to vacate the leased land within sixty days subsequent to plaintiff's demand to that effect; that the defendants have been required by the municipality to vacate and deliver possession of the said land, but more than the sixty days within which they ought to have vacated it have elapsed without their having done so to date; that the lease secured from the municipality of Cavite, by virtue whereof the defendants occupy the land that is the subject matter of the complaint, is ultra vires and therefore ipso facto null and void and of no force or effect, for the said land is an integral portion of a public plaza of public domain and use, and the municipal council of Cavite has never at any time had any power of authority to withdraw it from public use and to lease it to a private party for his own use, and so the defendants have never had any right to occupy or to retain the said land under leasehold, or in any other way, their occupation of the parcel being furthermore illegal; and therefore prayed that judgment be rendered declaring that possession of the said land lies with the plaintiff and ordering the defendants to vacate the land and deliver possession thereof to said plaintiff, with the costs against the defendants.

The demurrer filed to the foregoing complaint having been overruled, with exception on the part of the defendants, in their answer of April 10, 1912, they admitted some of the allegations contained in the complaint but denied that the parcel of land which they occupy and to which the complaint refers forms an integral part of Plaza Soledad, or that the lease secured by them from the municipality of Cavite was null and void and ultra vires, stating if they refused to vacate said land it was because they had acquired the right of possession thereof. As a special defense they alleged that, according to the lease, they could only be ordered to vacate the land leased when

the plaintiff municipality might need it for decoration or other public use, which does not apply in the present case; and in a cross-complaint they alleged that on the land which is the subject matter of the complaint the defendants have erected a house of strong materials, assessed at P3,000, which was constructed under a license secured from the plaintiff municipality; that if they should be ordered to vacate the said land they would suffer damages to the extent of P3,000, wherefore they prayed that they be absolved from the complaint, or in the contrary case that the plaintiff be sentenced to indemnify them in the sum of P3,000 as damages, and to pay the costs.

After a hearing of the case, wherein both parties submitted parol and documentary evidence, the court rendered the judgment that has been mentioned, whereto counsel for the municipality excepted and in writing asked for a reopening of the case and the holding of a new trial. This motion was denied, with exception on the part of the appellant, and the corresponding bill of exceptions was filed, approved and forwarded to the clerk of this court.

It is duly proven in the record that, upon presentation of an application by Hilaria Rojas, the municipal council of Cavite by resolution No. 10, dated July 3, 1907, Exhibit C, leased to the said Rojas some 70 or 80 square meters of Plaza Soledad, on condition that she pay rent quarterly in advance according to the schedule fixed in Ordinance No. 43, series of 1903, and that she obligate herself to vacate said land within sixty days subsequent to notification to that effect. The record shows (receipts, Exhibit 1) that she has paid the land tax on the house erected on the lot.

The boundary line between the properties of the municipality of Cavite and the naval reservation, as fixed in Act No. 1039 of the Philippine Commission, appears in the plan prepared by a naval engineer and submitted as evidence by the plaintiff, Exhibit C of civil case No. 724 of the Cavite court and registered in this court as No. 9071. According to said plan, defendant's house is erected on a plat of ground that forms part of the promenade called Plaza Soledad, and this was also so proven by the testimony of the plaintiff's witnesses.

By section 3 of the said Act No. 1039, passed January 12, 1904, the Philippine Commission granted to the municipality of Cavite all the land included in the tract called Plaza Soledad. In the case of Nicolas vs. Jose (6 Phil. Rep., 589), wherein the municipality of Cavite, represented by its president Catalino Nicolas, sought inscription in its name of the land comprised in the said Plaza Soledad, with objection on the part of Maria Jose et al. who occupied some parts thereof with their houses and who also sought that inscription be decreed in their name of the parcels of land in this plaza occupied by them, this court decided that neither the municipality nor the objectors were entitled to inscription, for with respect to the objectors said plaza belonged to the municipality of Cavite and with respect to the latter the said Plaza Soledad was not transferable property of that municipality to be inscribed in its name, because the intention of Act No. 1039 was that the said plaza and other places therein enumerated should be kept open for public transit; wherefore there can be no doubt that the defendant has no right to continue to occupy the land of the municipality leased by her, for it is an integral portion of Plaza Soledad," which is for public use and is reserved for the common benefit.

According to article 344 of the Civil Code: "Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service supported by said towns or provinces."

The said Plaza Soledad being a promenade for public use, the municipal council of Cavite could not in 1907 withdraw or exclude from public use a portion thereof in order to lease it for the sole benefit of the defendant Hilaria Rojas. In leasing a portion of said plaza or public place to the defendant for private use the plaintiff municipality exceeded its authority in the exercise of its powers by executing a contract over a thing of which it could not dispose, nor is it empowered so to do.

The Civil Code, article 1271, prescribes that everything which is not outside the commerce of man may be the object of a contract, and plazas and streets are outside of this commerce, as was decided by the supreme court of Spain in its decision of February 12, 1895, which says: "Communal things that cannot be sold because they are by their very nature outside of commerce are those for public use, such as the plazas, streets, common lands, rivers, fountains, etc."

Therefore, it must be concluded that the contract, Exhibit C, whereby the municipality of Cavite leased to Hilaria Rojas a portion of the Plaza Soledad is null and void and of no force or effect, because it is contrary to the law and the thing leased cannot be the object of a contract. On the hypothesis that the said lease is null and void in accordance with the provisions of article 1303 of the Civil Code, the defendant must restore and deliver possession of the land described in the complaint to the municipality of Cavite, which in its turn must restore to the said defendant all the sums it may have received from her in the nature of rentals just as soon as she restores the land improperly leased. For the same reasons as have been set forth, and as said contract is null and void in its origin, it can produce no effect and consequently the defendant is not entitled to claim that the plaintiff municipality indemnify her for the damages she may suffer by the removal of her house from the said land.

For all the foregoing reasons we must reverse the judgment appealed from and declare, as we do declare, that the land occupied by Hilaria Rojas forms part of the public plaza called Soledad, and as the lease of said parcel of land is null and void, we order the defendant to vacate it and release the land in question within thirty days, leaving it cleared as it was before her occupation. There is no ground for the indemnity sought in the nature of damages, but the municipality must in its turn restore to the defendant the rentals collected; without special finding as to the costs.

So ordered.

Arellano, C. J., Johnson and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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