

CECILIA U. LEDESMA, PETITIONER, VS. THE HON. COURT OF APPEALS, AND JOSE T. DIZON, RESPONDENTS.

G.R. No. 96914. July 23, 1992

Ponente: NOCON, J.

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NOCON, J.:

Petitioner Cecilia U. Ledesma prays before this Court for the reversal of the Decision of the respondent Court of Appeals of August 30, 1990[1] ordering the dismissal of her ejectment complaint before the Manila Metropolitan Trial Court for lack of cause of action due to non-compliance with Sections 6 and 9 of P.D. 1508 (Katarungang Pambarangay Law) as well as the Resolution of January 7, 1991[2] denying petitioner's Motion for Reconsideration of said Decision.

The facts of this case as summarized by the petitioner in her Memorandum are as follows:

"Petitioner is the owner-lessor of an apartment building located at 800-802 Remedios Street, Malate, Manila. Two (2) units of said apartment building were leased (now being unlawfully occupied) to private respondent at monthly rates of P3,450.00 for the unit/apartment located at 800 Remedios Street, Malate, Manila and P2,300.00 for the unit/apartment located at 802 Remedios Street, Malate, Manila, respectively, x x x.

"Said lease was originally covered by written contracts of lease both dated December 10, 1984 and except for the rates and duration, the terms and conditions of said contracts were impliedly renewed on a 'month-to-month' basis pursuant to Article 1670 of the Civil Code.

"One of the terms and conditions of the said Contract of Lease, that of monthly rental payments, was violated by private respondent and that as of October 31, 1988, said private respondent has incurred arrears for both units in the total sum of P14,039.00 for which letters of demand were sent to, and received by, private respondent.

"Upon failure of private respondent to honor the demand letters, petitioner referred the matter to the Barangay for conciliation which eventually issued a certification to file action. Petitioner was assisted by her son, Raymond U. Ledesma, (who is not a lawyer) during the barangay proceeding as she was suffering from recurring psychological and emotional ailment as can be seen from the receipts and prescriptions issued by her psychiatrist copies of which are attached as Annexes 'E-E10' of the said Petition.

"Due to the stubborn refusal of the private respondent to vacate the premises petitioner was constrained to retain the services of counsel to initiate this ejectment proceeding."[3]

The Metropolitan Trial Court, Branch 10, Manila, rendered a decision on June 21, 1989 ordering private respondent to vacate the premises, to pay rentals falling due after May 1989 and to pay attorney's fees in the amount of P2,500.00.[4] The Regional Trial Court of Manila, Branch IX, on appeal, affirmed the MTC ruling except for the award of attorney's fees which it reduced to P1,000.00.[5]

Private respondent, however, found favor with the respondent Court of Appeals when he elevated the case in a Petition for Review, when it ruled, thus:

“IN VIEW WHEREOF, the Decision dated October 13, 1989 of the RTC of Manila, Br. IX in Civil Case No. 89-49672 is reversed and set aside and the Complaint for Ejectment against petitioner is dismissed for lack of cause of action. No costs.”[6]

Thus, this appeal, raising several assignments of error, namely, that the Court of Appeals erred -

1. In holding that private respondent raised the issue of non-compliance with Sections 6 and 9 of P.D. 1508 in the lower court when in fact and in truth his answer and position paper failed to do so, contrary to evidence on record;
2. In failing to consider that private respondent had waived his right to question the lack of cause of action of the complaint, if there is any, contrary to law, established jurisprudence, and evidence on record;
3. In giving undue weight and credence to the self-serving allegations of the private respondent that summons was not served him, contrary to law, established jurisprudence and evidence on record.
4. In disregarding the well-known principle of law that barangay authorities are presumed to have performed their official duties and to have acted regularly in issuing the certificate to file action and grossly and manifestly erred in making an opposite conclusion to this effect, contrary to law, established jurisprudence and evidence on record.
5. In not holding that the settlement was repudiated, contrary to law and evidence on record.
6. In not affirming the judgment rendered by the Metropolitan Trial Court and Regional Trial Court below.

Petitioner assails private respondent for raising the issue of non-compliance with Sections 6 and 9 of P.D. 1508 only in his petition for review with the appellate court and which mislead the court to erroneously dismiss her complaint for ejectment.

Section 6 of P.D. 1508 states:

"SEC. 6. Conciliation pre-condition to filing of complaint. - No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated. x x x.

"xxx xxx xxx"

while Section 9 states that:

"SEC. 9. Appearance of parties in person. - In all proceedings provided for herein, the parties must appear in person without the assistance of counsel/ representative, with the exception of minors and incompetents who may be assisted by their next of kin who are not lawyers."

Petitioner submits that said issue, not having been raised by private respondent in the court below, cannot be raised for the first time on appeal, specially in the Court of Appeals, citing *Saludes vs. Pajarillo*.^[7] Private respondent had waived said objection, following the line of reasoning in *Royales vs. Intermediate Appellate Court*.^[8]

Private respondent denies having waived the defenses of non-compliance with Sections 6 and 9 of P.D. 1508. His Answer before the Metropolitan Trial Court, specifically paragraphs 4, 7 & 8, substantially raised the fact of non-compliance by petitioner with Sections 6 and 9 of P.D. 1508 and consequently, subjected petitioner's complaint to dismissal for lack of cause of action, to wit:

"xxx xxx xxx

"4. Answering defendant denies the allegations of paragraph 8, the truth of the matter being that he was not duly summoned nor subpoenaed by the Barangay Chairman, who issued the alluded certification, to appear for hearing." [9]

"xxx xxx xxx

"7. Plaintiff has no cause of action against answering defendant.

"8. The certification to file action (annex D of the complaint) was improperly or irregularly issued as the defendant was never summoned nor subpoenaed by the Barangay Chairman to appear for hearing in connection with the alleged complaint of the plaintiff. In effect the mandatory provision of P.D. 1508 was not complied with warranting the dismissal of the instant complaint."

"xxx xxx xxx. [10]

We do not agree with petitioner that the issue of non-compliance with Sections 6 and 9 of P.D. 1508 was raised only for the first time in the Court of Appeals. When private respondent stated that he was never summoned or subpoenaed by the Barangay Chairman, he, in effect, was stating that since he was never summoned, he could not appear in person for the needed confrontation of the parties before the Lupon Chairman for conciliation and/or amicable settlement. Without the mandatory personal confrontation, no complaint could be filed with the MTC. Private respondent's allegation in paragraph 4 of his Answer that he was never summoned or subpoenaed by the Barangay Chairman; that plaintiff has no cause of action against him as alleged in paragraph 7 of the Answer; and that the certification to file action was improperly issued in view of the foregoing allegations thereby resulting in non-compliance with the mandatory requirements of P.D. No. 1508, as stated in paragraph 8 of the Answer are in substantial compliance with the raising of said issues and/or objections in the court below.

Petitioner would like to make it appear to this Court that she appeared before the Lupon Chairman to confront private respondent. She stated in her Petition [11] and her Memorandum [12] that:

"Upon failure of private respondent to honor the demand letters, petitioner referred the matter to the barangay for conciliation which eventually issued a certification to file action. Petitioner was assisted by her son, Raymond U. Ledesma, (who is not a lawyer) during the barangay proceeding as she was suffering from recurring psychological and emotional ailment as can be seen from the receipt and prescriptions issued by her psychiatrist copies of which are attached herewith as Annexes 'E-E10'."

However, as found out by the respondent court:

"We agree with the petitioner that private respondent Cecile Ledesma failed to comply with section 6 of P.D. 1508. The record of the case is barren showing compliance by the private respondent. Indeed, the documentary evidence of the private respondent herself attached to the complaint buttresses this conclusion. They show that it is not the private respondent but her son, Raymund U. Ledesma, and her lawyer, Atty. Epifania Navarro who dealt with the petitioner regarding their dispute. Thus, the demand letter dated October 18, 1988 sent to the petitioner for payment of rentals in the sum of P14,039.00 was signed by Raymund Ledesma. On the other hand, the demand letter dated November 14, 1988 was signed by Atty. Epifania Navarro. More telling is the Certification to File Action signed by Barangay Chairman, Alberto A. Solis where it appears that the complainant is Raymund U. Ledesma and not the private respondent." [13]

As stated earlier, Section 9 of P.D. 1508 mandates personal confrontation of the parties because:

"x x x a personal confrontation between the parties without the intervention of a counsel or representative would generate spontaneity and a favorable disposition to amicable settlement on the part of the disputants. In

other words, the said procedure is deemed conducive to the successful resolution of the dispute at the barangay level." [14]

Petitioner tries to show that her failure to personally appear before the Barangay Chairman was because of her recurring psychological ailments. But for the entire year of 1988 [15] -- specifically September to December 6 -- there is no indication at all that petitioner went to see her psychiatrist for consultation. The only conclusion is that 1988 was a lucid interval for petitioner. There was, therefore, no excuse then for her non-appearance at the Lupon Chairman's office.

Petitioner, not having shown that she is incompetent, cannot be represented by counsel or even by attorney-in-fact who is next of kin. [16]

As explained by the Minister of Justice with whom We agree:

"To ensure compliance with the requirement of personal confrontation between the parties, and thereby, the effectiveness of the barangay conciliation proceedings as a mode of dispute resolution, the above-quoted provision is couched in mandatory language. Moreover, pursuant to the familiar maxim in statutory construction dictating that 'expressio unius est exclusio alterius', the express exceptions made regarding minors and incompetents must be construed as exclusive of all others not mentioned." [17]

Petitioner's non-compliance with Secs. 6 and 9 of P.D. 1508 legally barred her from pursuing the ejectment case in the MTC of Manila. [18] Having arrived at this conclusion, there is no need for Us to discuss the other issues involved.

WHEREFORE, the questioned decision and resolution of the respondent Court are affirmed in toto with treble costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Rollo, p. 34.

[2] Rollo, p. 50.

[3] Rollo, pp. 115-117.

[4] Decision of Manila RTC, Br. X, p. 34, Rollo.

[5] Decision of Manila RTC, Br. IX, p. 34, Rollo.

[6] CA-G.R. SP No. 19704 dated Aug. 30, 1990, penned by Justice Reynato S. Puno and concurred in by Justice Jorge S. Imperial and Artemon D. Luna (Rollo, p. 47).

[7] 44 O.G. 12, pp. 4892, 4894.

[8] 127 SCRA 470, 471, 474.

[9] Rollo, p. 51.

[10] Rollo, p. 52.

[11] Rollo, p. 12.

[12] Rollo., p. 116.

[13] Rollo, p. 44.

[14] Opinion No. 135, Minister of Justice, s. 1981.

[15] See Annexes E to E-10-2.

[16] Section 9, P.D. 1508; Ramos vs. Court of Appeals, 174 SCRA 690, 695.

[17] Opinion No. 135, Minister of Justice, s. 1981.

[18] Section 4(d); P.D. 1508; Ramos vs. Court of Appeals, 174 SCRA 690, 695.

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