2 Phil. 404

[G.R. No. 1118. August 06, 1903]

VICENTE GONZALEZ, PLAINTIFF AND APPELLEE, VS. TELESFORO CRISANTO, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

The bill of exceptions contains a transcript of a contract dated April 4, 1891, by which the house, No. 28 old enumeration and 278 modern enumeration, Calle San Sebastian, Quiapo, was leased for the purpose of establishing a bakery and bread shop therein. The rental agreed upon was 50 pesos per month. The term was three years, prorogable for an equal period after the expiration of the first term. The lease was to take effect May 1, 1891. Under this contract the tenant, Telesforo Crisanto, bound himself to pay the rent during the first ten days of each month, and it was stipulated that the proprietor or lessor was under no circumstances to evict the tenant, provided the payment of the rent agreed upon was promptly made, and in case of the breach of this stipulation the lessor bound himself to the payment of damages to the tenant, who, in turn, undertook not to vacate the premises without just cause, and in case of his doing so then to pay damages to the owner or lessor. The document was signed by the contracting parties, Jose Flores, receiver, Ramon Valenzuela, guardian of the minor children of the late Severo Crisanto, and Mauricia Asico, and by the tenant, Telesforo Crisanto. The contract was also countersigned by the procurator of the Augustinian friars in token of his consent.

February 7, 1902, at the instance of Gonzalez Maninang, a notary public, Genaro Heredia, formally notified Telesforo Crisanto that if he desired to continue the lease of the premises in question he might do so upon the condition, among others, of paying the sum of $150, gold, per month, or its equivalent in Mexican silver, from March 1, 1902, this rent to be paid monthly in advance, within the first two days of each month. The tenant was notified that a failure to comply with this condition would be regarded as a breach of the contract, and that

the tenant, Crisanto, would thereupon be expected to vacate the leased premises and to replace on the lower story the railings and other things which had been removed from the building, and to restore the building to its original condition. The tenant was further notified to vacate the premises and to place them at the disposal of Gonzalez Maninang before March 1, 1902, in case he did not see fit to accept the conditions imposed.

The tenant, Telesforo Crisanto, upon being notified by the notary of the conditions of the new lease, replied that he would expect Gonzalez Maninang to comply with the terms of the lease of the premises in question, as the same appeared of record in the Court of First Instance.

On March 4, 1902, an action was brought in the justice's court of this city by Gonzalez Maninang for the purpose of obtaining a judgment of eviction of the tenant, Crisanto, from the premises in question and a restoration of the possession thereof to the plaintiff, and for judgment against the defendant for rent at the rate of $150, gold, per month, and damages and costs. The plaintiff also prayed for any other just and proper relief, in view of the fact that Crisanto had refused to pay the rent on and after March 1, 1902, or to restore the possession of the premises to the plaintiff.

The defendant replied to this demand that, when he informed the plaintiff that he expected him to respect the contract of lease, this did not signify that the tenant opposed the notice to quit, or that he had accepted or rejected the increased rental, in view of the subsistence of the original contract; that it was not true that Crisanto had refused to pay the rent of $150, gold, or to vacate the premises, because1 the rent for the month of March had not been collected, nor had the legal period for the payment of the rent fixed by the latter part of section 80 of the Code of Civil Procedure yet expired; that the expiration of this period was a condition precedent to an action for the recovery of possession of the house in question; that therefore the plaintiff had no right of action against the defendant; that there was another similar action pending concerning the unlawful detainer, which action the plaintiff had not abandoned, the said action being at that time pending in the justice court of the south district; that this was a bar to the action under paragraph 3 of section 91 of the said Code; that the complaint did not state facts sufficient to constitute a cause of action, and therefore defendant prayed for judgment against the plaintiff for a specific performance of the contract of lease, with costs.

The trial was prosecuted to a termination in the justice's court, and on March 12, 1902, the justice of the peace rendered judgment against the defendant in favor of the plaintiff for the

recovery of the possession of the house No. 278 San Sebastian Street, and for the payment of $150, gold, jier month rent corresponding to that month, and the payment of the costs. Against this judgment the defendant appealed to the Court of First Instance.

In the action in the Court of First Instance the defendant and appellant alleged, as a bar to the continuation of the case at second instance, that he had himself instituted in the same court an action for the enforcement of the contract of lease, and insisted that an action of unlawful detainer could only be brought after a decision in favor of the plaintiff in the action for the enforcement of a contract It was further contended that because the original term of the contract of lease was for three years, with an agreement to renew for three years more, it had been tacitly renewed for a like period of three years from time to time by the mere fact that the tenant had remained in possession and had continued to pay the rent stipulated.

The appellee, on the contrary, contended that the term of the contract of lease had expired; that the tenant had been given notice to quit in case of a refusal to pay the $150, gold, per month rent, and that without consenting to pay this amount he had continued in possession of the premises, thereby preventing the lessor from collecting this amount, and that the tenant was still in possession of the premises. The judge, in view of the result of the proceedings, entered judgment July 24, 1902, affirming the judgment appealed and condemning the defendant4appellant to vacate the premises in question and to pay the monthly rental of $150, gold, per month from March 1, 1902, until such time as the lessor should be restored to the possession of the premises, and to the payment of costs.

March 31, 1902, Telesforo Crisanto brought an action against the attorney of the procurator of the Augustinian friars praying for judgment against the Augustinians for the specific performance of the contract of April 4, 1891, or the alternative of payment of the amounts claimed as damages, and of the costs. The complaint alleged that the plaintiff, Crisanto, had not only strictly complied, up to the time of bringing his action, with his obligation to pay the monthly rental agreed upon, but, in accordance with the terms of the contract, he had expended money for the purpose of adapting the premises to the carrying on of a bakery business, and had furthermore borne the expense of the repair and preservation of the property, as shown by receipts exhibited with the complaint; that in the fourth clause of the contract it was agreed that the lessee, Crisanto,was not to be evicted upon any pretext, provided he continued to pay the rental agreed upon, the lessor binding himself to the payment of damages in case of a breach of this stipulation; that an action had been brought against the plaintiff, Crisanto, for the purpose of requiring him to abandon the premises in

case of his refusal to pay an exorbitant rent, other than that agreed upon; and that therefore he, not being in arrears in the payment of the rent stipulated, was entitled to the recovery of damages from the Augustinian friars, which said damages amounted to $1,589.68, Mexican, together with the profits which the plaintiff would thereby fail to realize, and which amounted to 2,800 pesos per annum, more or less. He alleged, as a ground for his contention, that the will of the parties is the law of the contract, however entered into.

On May 16, 1902, the plaintiff filed a paper stating that his former complaint for the enforcement of the contract had been filed in a separate action because it could not properly be consolidated with the action of unlawful detainer, and that although in the two actions referred to the subject-matter was the same and the action was between the same parties, the two complaints could not be consolidated because the relief sought in each was different, as well as the procedure, to be followed; that therefore, even admitting that there was another action pending between the plaintiff and the defendant in the action of unlawful detainer, this circumstance is not a bar to the action brought by Telesforo Crisanto for the enforcement of a contract or the recovery of damages for the loss of the possession of the premises—thus reiterating his first complaint with this addition or amendment, he prays that a judgment be rendered against the defendant in the manner requested.

July 24, 1902, the Court of First Instance entered judgment for the defendant, Gonzalez Maninang; in the action for the enforcement of the contract of lease, with the costs to the plaintiff.

Against the two judgments referred to a bill of exceptions was presented to the court, after the denial of a motion for a new trial of the unlawful detainer case. September 24 of the same year the excepting party asked the court to order a consolidation of the two bills of exceptions presented against the judgments rendered in the two cases mentioned, for the reasons therein expressed. The two bills of exceptions appear to have been, in fact, brought up here together, although we find no order of the court directing a consolidation of the two cases.

Article 1565 of the Civil Code provides that if a lease is for a definite period the tenancy expires with the term, without the necessity of notice to quit.

Applying this provision of law to the contract of lease of the house No. 28 old enumeration and 278 modern enumeration, situated in San Sebastian Street, we must conclude that the lease expired May 1, 1897—that is, at the end of the term of three years and the extension

of three years more. If the term of the lease and its extension expressly stipulated between the' two contracting parties has expired, there is no legal ground upon which any claim can be based on this contract. It is true that the tenant, Crisanto, continued to occupy the premises notwithstanding the fact that the term of the lease had expired; but this tenancy was the result of successive implied renewals from month to month since May, 1897, inasmuch as the rental agreed upon has been paid from month to month since that time.

Article 1566 of the Civil Code provides that if, at the expiration of the contract, the tenant, with the acquiescence of the landlord, holds over after the expiration of the term, a tacit renewal of the lease is implied for the periods established by articles 1577 and 1581, unless notice to quit has been given.

Article 1577 of the Code is not applicable, as it refers to the lease of rural estates. The article in point is 1.581, which provides that when a term has not been fixed for the lease it is understood to he for years when an annual rent has been fixed, for months when the rent is monthly, and for davs when it is daily.

The tenant, Crisato, has been in possession of the premises in question by successive tacit renewals from May, 1897, to January, 1902, in accordance with the provisions of the law above cited. On February 7 following, the tenant was given notice to quit the premises in case of his unwillingness to accept the new conditions imposed and to pay the increased rental.

The lease of April 4, 1891, was entered into after the promulgation of the present Civil Code; consequently the successive tacit renewals under which the tenant, Crisanto, has been occupying the premises in question must be regarded as running from month to month since May, 1897, in accordance with the, provisions of article 1581, in connection with article 1566,, of the Civil Code. It is unavailing for the tenant to seek to rely upon the provisions of the old laws with respect to the duration of the term, among them the act of April 9, 1842, and it can not be admitted that this tacit renewal was for a period equal to the term fixed in the original agreement, which had ceased to be of effect because it was extinguished.

Again we have occasion to cite judgments of the supreme court of Spain, which are authoritative, as the matter concerns the application and interpretation of a law—the Civil Code—of Spanish origin. In the judgment of cassation of September 29, 1890, the court says that when the term of a lease has expired and the tenancy has been continued by a tacit

renewal, article 15f)(> clearly provides that the term of this renewal is not to be equal to that of the original contract, but is to be for the periods respectively established in articles 1577 and 1581; that is, for an agricultural year with respect to rural estates, and for a year, a month, or a day with respect to urban estates, according to whether the payment of the rental is yearly, monthly, or daily.

The same doctrine is repeated in the judgments of November 16, 1899, and October 12, 1900, in the latter of which it is expressly laid down, in accordance with former rulings of the same court, that the tacit renewal of a lease is not for a period equal to that stipulated in the original contract, but for the periods respectively established by articles 1577 and 1581 of the Code, the provisions of which imply the expiration of the covenants contained in the express contract, with respect to the duration of the tenancy. .

If an action of unlawful detainer, after the expiration of the conventional term, such as that brought by the representative of the Augustinian friars, presupposes the extinction of the contract of lease, it is evident that after it has been declared by a final judgment that the plaintiff was entitled to recover possession of the premises it is legally impossible to discuss the question of whether the lessor should or should not be compelled to perform the extinguished contract, as this very point is one which has necessarily been the object of the litigation, and the rendition of judgment for the restitution of the premises implies of necessity the nonexistence of the contract of lease.

The tenant, Crisanto, has not proven nor in any way indicated that there was an *express* renewal of the contract of April 4, 1891. What the tenant alleged was a *tacit* renewal after the six years, and such renewal, under article 1581 of the Code, must be regarded as merely from month to month, because the rent was paid monthly, and this renewal was finally concluded in January, 1902, by virtue of the notice to quit given on February 7 following.

The provisions of articles 1071, 1278, 1281, and 1286 of the Code refer to subsisting and enforeeable contracts, and therefore it is useless to cite them with respect to a contract which has expired and upon which no right or obligation can be predicated.

We make no decision with respect to the consolidation of the two bills of exceptions, notwithstanding the objection made thereto by the appellee at the hearing in this court, inasmuch as this decision is in favor of the objecting party and therefore1 such formal defect does not affect the merits of the case.

For the reasons stated we are of the opinion that the judgments appealed, dated July 24,

1902, should be affirmed, with tht: costs to the appellant, Orisanto, and it is so ordered.

Arrellano, C. J., Cooper, Willard, Mapa, and *McDonough, JJ.,* concur.

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