7 Phil. 238

[G.R. No. 2395. December 29, 1906]

DOROTEO CORTES, PLAINTIFF AND APPELLEE, VS. DY-JIA AND DY-CHUANDINU, DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

On the 25th of September, 1901, the plaintiff leased to the defendant Dy-Jia, and to one Dy-Guico, a tract of land in the city of Manila for five years from the 1st day of October, 1901, the lease terminating on the 30th day of September, 1900. Clause E of that contract is as follows:

> "E. Los arrendatarios bajo ningun pretexto no podran subarrendar la finca de que se trata ni hipotecar los edificios que se construyan, y si lo contrario hicieren quedara rescindido el presente contrato como si hubiesen transcurrido los einco anos estipulados, quedando en beneficio del solar todas las edificaciones construidas en el."

The lessees entered into possession of the tract of land and erected thereon a building at a cost of about 11,000 pesos. The defendant Li Tsung Ling, sued under the name of Dy-Chuanding, alleged in his answer that the lessees, Dy-Jia and Dy-Guico, were merely agents of his in making this lease and constructing the building and that he was the real owner of the leasehold interest and of the said building. On the 31st of December, 1902, Dy-Guico signed a written statement in which he declared that the building belonged to the said defendant, Li Tsung Ling, and that the latter should pay the rent due under the lease to the plaintiff. On the 18th of May, 1903, Dy-Jia made a similar declaration in writing and assigned and transferred to the defendant Li Tsung Ling all his interest in the lot rented as aforesaid from the plaintiff. The defendant Li Tsung Ling paid the rent to the plaintiff from

November, 1902, until January, 1904. The receipts which the plaintiff gave for this rent were made out in the name of Dy-Jia and Dy-Guico. It is claimed by the defendant that the plaintiff knew during this time that all the interest in the lease had been transferred by the lessees to him. That is denied by the plaintiff. We do not find it necessary, however, to decide this question of fact. On the 8th of January, 1904, the lawyer for the defendant Li Tsung Ling wrote a letter to the plaintiff in regard to the rent due for the month of January, in which letter he stated that the lessees were the agents of his client, the defendant Li Tsung Ling. The plaintiff testified that at once upon receipt of this letter he made investigations and learned, as he says, for the first time that the interest of the lessees had, in November, 1902, been transferred to the defendant Li Tsung Ling in violation, as he claims, of clause E above quoted from the contract of lease. On the 10th day of January, 1904, the defendant Li Tsung Ling paid to the plaintiff and the plaintiff received from him the rent for the month of January, and the plaintiff then gave a receipt, of which the following is a copy:

> "Recibi de Dy-Jia y Dy-Guico la cantidad de ciento y. diez pesos, conant importe del alquiler del terreno en las calles de Poblete y Claverfa que ocupa, correspondiente al presente mes.
>
> "Manila, 1.° de Enero de 1904.
>
> (Firmado) "D. CORTES.
>
> "Son P110."

Six days after—that is to say, on the 16th day of January—the plaintiff brought this action, asking that the contract of lease be rescinded as of the 12th of November, l902, and that the be declared the owner of the buildings that had been constructed upon the property therein mentioned.

Judgment was rendered in the court below in favor of the plaintiff; the defendant Li Tsung Ling moved for a new trial on the ground that the findings of fact were not justified by the evidence, and that motion having been denied, he has brought the case here by bill of exceptions.

Notwithstanding the provisions of clause E of the contract of lease, a valid assignment could be made by the lessees of their interest therein with the consent of the lessor. That consent

need not be express. Any act performed by the lessor which indicated that he recognized the relation of landlord and tenant as existing between himself and the assignee of the lessees would amount to such consent. Such an act, we think, was performed by the plaintiff in this case when he received the rent for the month of January from the assignee. That at the time he received this rent he knew of the assignment, is established both by the terms of the receipt which he gave on the 10th day of January and by his own evidence in the case. By that act he clearly recognized the assignee as his tenant of the property for the month of January, and thereby gave his consent to the assignment which had been made by the lessees to this defendant. After that act of recognition he could not insist upon the forfeiture of the lease for a violation of the provisions of said clause E.

The defendant Li Tsung Ling has alleged in his answer a counterclaim and he asks that the contract of lease be reformed by striking therefrom clause D, which provides for the removal at the termination of the lease of any buildings which may be erected upon the leased property, and substituting in place thereof another clause requiring the plaintiff at the expiration of the lease to pay the defendant the reasonable value of the buildings erected thereon or to extend the term of the lease. There is no merit in this counterclaim.

The judgment of the court below is reversed and the defendant Li Tsung Ling is absolved from the complaint, with costs of the first instance. No costs will be allowed to either party in this court. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court from whence it came for proper action. So ordered.

Torres and *Carson, JJ.,* concur.

Tracey, J., concurs in the result.

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