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[G.R. No. 3003. January 02, 1907]

LORENZA ALBURO, PLAINTIFF AND APPELLEE, VS. CATALINA VILLANUEVA, DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

In this case no motion for a new trial was filed on the ground that the findings of fact of the trial judge were manifestly contrary to the weight of the evidence, and the facts found must be accepted as set out in the opinion of the lower court.

It appears that the plaintiff is the owner, by inheritance from her grandfather, of a certain lot of land in the city of Manila which, by written contract, was rented on the 23d day of January, 1892, to one Antonio Susano Goenco, for a term of six years, with the privilege of renewal for a second term of six years; that the defendant, who is the wife of the said Goenco, came into possession by virtue of this rental contract; that the defendant and her husband expended a considerable sum of money filling in and leveling the lot and that they built a house of hard materials thereon; and that the rental contract, while it expressly permitted the tenant to build upon the lot, is silent as to tbe disposition of the house at the expiration of the rental term and makes no express provision as to improvements to be made upon the land by way of leveling or otherwise.

The defendant having refused to surrender the lot in question at the expiration of the rental term, this action was brought to recover possession thereof and judgment was rendered for the plaintiff, reserving to the defendant the right to remove the house from the lot.

Counsel for the defendant contends that she is entitled to a. renewal of the rental contract for a third term of six years; or if this be denied, to be reimbursed for expenditures in filling in and leveling the lot, and to have the benefits of the provisions of article 361 of the Civil Code, wherein it is provided that—

> "The owner of the land on which building, sowing, or planting is done in good faith shall have a right to appropriate as his own the work, sowing, or planting, having previously paid the indemnity mentioned in articles four hundred and fifty-three and four hundred and fifty-four, or to oblige the person who has built or planted to pay him the value of the land."

It is said that this rental contract should be construed in accordance with the provisions of articles 1281, 1282, 1288, and 1289 of the Civil Code so as to give the defendant the right to renew the contract for a third term of six years, and so on indefinitely so long as she faithfully paid the rent, but we are of opinion that there is no room for interpretation in accordance with the provisions of these articles since the contract expressly provides for a term of a definite number of years, with a privilege of renewal for a second term of a definite number of years. This is a very usual form of rental contract and its terms are so clear and explicit that they do not justify an attempt to read into it any alleged intention of the parties other than that which appears upon its face.

In support of her claim for reimbursement for expenses in filling in and leveling the lot, defendant relies on the provisions of paragraph 2 of article 1554 of the Civil Code, wherein it is provided that the landlord is obliged "during the lease to make all necessary repairs in order to preserve the thing rented in condition to serve for the purpose to which it was destined." But, as Manresa points out, this article is strictly limited in its effect to repairs necessary to *preserve* the thing rented in a condition suitable to the use agreed upon (*para el uso pactado*). A repair implies the putting of something back into the condition in which it was originally and not an improvement in the condition thereof by adding something new thereto, unless the new thing be in substitution of something formerly in existence and is added to preserve the original status of the subject-matter of the repairs; the filling in of a vacant lot can not be regarded as a repair as the word is used in this article; and even though it could be so considered, the remedy of the tenant under the provisions of article 1556, when the landlord fails to make necessary repairs, is by demand for the annulment of the contract and indemnity by way of damages or without demanding annulment of the contract by demand for damages for negligence on the part of the landlord; and the tenant is not authorized to make such repairs at the expense of the landlord, except when it is a matter of the most urgent necessity (*reparacion urgentisima*) "where the slightest delay would involve grave damages," when the tenant may take the absolutely necessary means to avoid the loss, at the cost of the owner, doing only that which is required by the force of circumstances and no more, but this on the ground that "he had acted by virtue of the social

duty of mutual aid and assistance." (Manresa, vol. 10, p. 473.)

It has been suggested that the claim of the defendant for compensation for the filling in and leveling of the lot may be based upon article 453 of the Civil Code which provides that "necessary expenditures will be repaid to all persons in possession (*los gastos necesarios se abonan a todo poseedor*)." It may be doubted, however, whether the "possessor" referred to in this provision can be said to include one who stands in relation of tenant to his landlord, for the above-cited article 1554 of the Civil Code, and the chapter wherein it occurs, seem to provide for such cases; and in any event we do not think that the filling in and improvement of a lot can be brought under the head of necessary expenses (*gastos necesarios*) as used in this connection. Manresa in his commentaries upon this article says that *gastos necesarios* are no others than those made for the preservation of the thing upon which they have been expended.

The contention that the defendant is entitled to the benefits of the provisions of article 361 of the Civil Code can not be maintained because the right to indemnification secured in that article is manifestly intended to apply only to a case where one builds or sows or plants on land in which he believes himself to have a claim of title and not to lands wherein one's only interest is that of tenant under a rental contract; otherwise it would always be in the power of the tenant to improve his landlord out of his property. The right of a tenant in regard to improvements (*mejoras*) is expressly provided for in article 1573 read in connection with article 487, wherein it is provided that the tenant may make such improvements, either useful or convenient, as he considers advantageous, provided he does not alter the form and substance of the thing rented, but that he will have no right for indemnification therefor, though he can take away such improvements if it is possible to do so without injury or damage to the thing rented.

The trial court authorized the removal of the house, apparently relying on the provisions of this article, but since no objection was made by the plaintiff in the court below, we are not authorized to review his action in this connection.

The judgment appealed from is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter let the record in this case be remanded to the court of its origin for execution.

Arellano, C. J., Torres, Willard, and *Tracey, JJ.,* concur.

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