1 Phil. 589

[G.R. No. 551. December 24, 1902]

MARIANO DEVEZA, PLAINTIFF AND APPELLANT, VS. SIMEON GUINOO, DEFENDANT AND APPELLEE.

D E C I S I O N

TORRES, J.:

On the 14th of August, 1896, a public instrument was executed before a notary public of the city of Iloilo by Guinoo and Deveza, by which the former sold to the latter, in consideration of the sum of 3,540 pesos, a piece of land situated at the places called Lanotan and Simulan of the town of Minuluan, in the District of Occidental Negros, subject to the right of redemption in case the vendor should return the consideration within a period to expire on the 10th of April, 1897. In the event of a failure to return the consideration the sale was to become absolute and irrevocable. In the meantime the vendor was to continue to hold the land and enjoy the usufruct of the same without paying anything to the purchaser. This instrument was provisionally entered in the register, and this provisional entry was subsequently converted into a final inscription.

By petition of the 14th of June, 1898, Solicitor Alejandro Monreal, on behalf of Mariano Deveza, filed a complaint bringing an action of unlawful detainer against Simeon Guinoo, and prayed that after the usual legal proceedings judgment be rendered in favor of the plaintiff and warning the defendant that he would be evicted should he fail to vacate the land mentioned within the term of twenty days, with the costs to said defendant. In support of this petition he alleged that by reason of the expiration of the term agreed upon for the redemption without the return by the vendor to the purchaser of the consideration oi the sale the same had become final, and that on this account demand had been made upon Guinoo at the instance of the purchaser by the justice of the peace of Minuluan on the 5th of May previous that he vacate the land and leave the same at the disposal of Deveza, with all its accessories, but that he had failed to do so, and that therefore the said Deveza was

entitled to maintain this action of unlawful detainer by reason of the facts of his unquestionable right to the enjoyment of the property held by Guinoo as a precarious tenant without the payment of rent and by him unlawfully detained.

Upon the filing of this complaint a day was set for a hearing, in accordance with the provisions of the old Law of Civil Procedure, but before this time arrived counsel for the defendant, Guinoo, filed a petition, in which he advanced the dilatory plea of *lis pendens*, and prayed the court to hold that he was not obliged to answer the complaint in this action of unlawful detainer, with the costs to the plaintiff. This petition was served upon the plaintiff, and he was given three days in which to reply.

By another petition counsel for the defendant, Guinoo, moved the court to vacate the order of the 25th of June, 1898, by which a new day was set for the hearing of the verbal action of unlawful detainer, and prayed the court to suspend this hearing until the said exception of *lis pendens*had been decided. A copy of this petition was also served upon the plaintiff, in order that he might answer the same within three days.

It appears from the minutes of the trial held on the 5th of July of said year, on which date the parties appeared, that the plaintiff urged the same contentions of law and fact as those expressed in his complaint, and prayed for the same relief demanded therein. Counsel for the defendant, however, argued that as a dilatory plea of Us pendens had been interposed he could not answer the complaint in the action for unlawful detainer, believing that the proceedings should be suspended until the plea interposed should have been passed upon, and protested against the celebration of the oral trial, for the suspension of which he had moved the court The time for trial having passed, the judge adjourned the case until the following day.

The plaintiff, Deveza, filed a written answer to the dilatory plea referred to, and upon the grounds advanced therein prayed that the plea be overruled, with the costs to the defendant. By another petition counsel for the plaintiff asked that the defendant’s motion for the vacation of the order of June 25 be overruled, with costs.

By order of July 5 the court ruled, refusing to take action upon the incidental question raised by the defendant, and denied the motion for the vacation of the order of June 25.

The oral trial having been continued, it appears from the minutes of the proceedings dated July 6, 1898, that the defendant stated that having been notified of the order entered the preceding day he protested against the whole proceedings as null and void, and reserved his

right to appeal within the legal term; that without making formal answer to the complaint, he solely desired to state that he did not admit the facts alleged therein; that it was not true that the defendant, Guinoo, was a precarious tenant of the property, or that the plaintiff, Deveza, was or had been the owner thereof, because the deed upon which he based his claim was rescinded by an agreement between the parties, which, in due time, would be proven. With this the hearing was terminated.

Counsel for the defendant filed a petition praying for the reversal of the order of July 5, and that the court direct the suspension of the action of unlawful detainer, with the costs to the plaintiff. Of this petition a copy was served upon the plaintiff by the order of July 27, 1898. Since this date no further proceedings were had. in the case.

By petition dated the 16th of January, 1901, Attorney Antonio Jaime entered an apearance on behalf of the plaintiff, Deveza, and prayed the court that after report by the clerk upon the condition of the case a ruling be had upon the plea of lis pendens. The judge, by order of the 21st of Setember, 1901, and reserving his action with respect to the prayer as to the decision af the plea of *lis pendens,* admitted Attorney Jaime as a party to the suit in representation of Deveza.

Counsel for the plaintiff, by another petition alleging that the case had already been argued, moved the court to render judgment directing an eviction. The judge, without prejudice to subsequent action upon this motion, di? rected that notice be served upon the defendant, Guinoo, to appoint an attorney to represent and defend him in the case within a period of fourteen days, notice of which order was served by the usual process.

By order of November 11, 1901, the 13th of that month at 10 a. m. was set for the hearing of the action of unlawful detainer. Directions were given for service of notice of this order upon Vicente Franco, as the representative of the defendant, Guinoo.

On the 15th of November, 1901, the judgment now pending before us on appeal was entered.

As appears from the proceeding resume of an examination of the record, the course of the action for unlawful detainer was suspended while the oral trial prescribed by article 1575 of the Law of Civil Procedure then in force was still pending.

The judge, when setting the case down for trial, appears to have intended (although he did not so expressly state) to apply the provisions of the present Code of Civil Procedure which

went into operation on the 1st of October, 1901, and accordingly evidence was received at the hearing, the result of which, however, does not appear from the record, although reference is made to this evidence in the text of the decision. (This decision was entered by the court below, as it appears on page 113 of the record, without complying with the provisions of article 133 of the said Code.)

If the new Code was applied, the judge should have directed the presentation of a bill of exceptions for allowance, in accordance with articles 141 to 143 of the same Code, but under no circumstances could he properly direct that the original papers be sent up.

From an examination of the proceedings had in the case, from page 109 forward, it is evident that the case has not been conducted in accordance with the procedure estab Iished by the former Law of Civil Procedure, more especially in articles 1571 and 1575 thereof.

Had the judge authority to apply the new procedural law to this action of unlawful detainer commenced under the old Law of Civil Procedure and still pending at the time the new Code became operative? We think he had not.

Cognizance of actions of unlawful detainer and of all actions arising from an ouster from or illegal detention of real property, corresponds to the justice of the peace of the place where the property is situated, as expressly provided by article 80 of the Code of Civil Procedure. Consequently, even had it been possible to apply the new procedural law to this action, in accordance with paragraph 4 of article 795 of the new Code, the special judge of Negros was without jurisdiction to try the case, as jurisdiction over such matters has veen vested in the justice of the peace of the place where thre property is situated by the provisions of article 80 of the Code of Civil Procedure, and by those of paragraph 2 of article 56 of the Organic Act.

The provisions of paragraph 3 of article 795 above cited should therefore be applied, and consequently the proceedings in this action of unlawful detainer should be continued inthe Court of First Instance of Negros, in accordance with the provisions of the former law of Civil Procedure. The proceedings had below and recorded on pages 112 *et.seq.* can not be sustained, as they do not conform to the law, and the judgment appealed must also be set aside, because the record does not contain the evidence taken and we are therefore unable to pass upon it as the law requires us to do. Furthermore, in order that a proper judgment may be entered in an action for unlawful detainer, compliance must have been had with all the formal provisions established by the procedural law, the exact observance of which is a

matter of public policy.

On the grounds stated we are of the opinion that the proceedings should be set aside from page 112 forward, together with the judgment appealed, which is hereby declared void. The judge is directed to continue the trial of the case in accordance with the old Law of Civil Procedure. No special ruling will be amde as to the costs of either instnace. So ordered.

Arellano, C. J., Cooper, Smith, Willard, Mapa, and *Ladd, JJ.,* concur.

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