

1 Phil. 289

[ G.R. No. 587. July 14, 1902 ]

**FIDEL RIVERA, PLAINTIFF AND APPELLEE, VS. PAULA DE GUZMAN, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**MAPA, J.:**

The plaintiff in bringing this action of unlawful detainer alleged that he was the possessor and owner of the lot which is the subject of the complaint, that the defendant occupies this lot, on which she has constructed a house, as a precarious tenant, and by his tolerance only without the payment of rent, and that demand was made upon her on the 31st of July, 1901, to vacate the lot within the term of thirty days, but that she failed to do so up to the 12th of September following, which is the date on which the complaint was drawn up.

In support of the complaint he presented a notarial act dated the 31st of July, 1901, in which the demand made upon the defendant is recorded, and also a transcript of a possessory information presented in the Court of First Instance of Quiapo on the 11th of June of the same year, approved by order of the same court on the 17th of the said month and recorded in the registry of property of the North District of Manila on the 24th of July following. From this it appears that two witnesses testified that the plaintiff purchased the lot in question from D. Jose Torres y Osorio in the year 1898, and that since that time and up to the date on which the said possessory information was presented he has been in the peaceful and uninterrupted possession of the same.

The defendant denies the facts alleged in the complaint and states that the lot which is the subject of the action belongs in fee to her and her husband, Hilario Rafael, and that therefore they are in possession of the same by virtue of the right of ownership and not as precarious tenants.

The allegations of the defendant tend to show that she purchased the said lot from D. Jose

Torres, who is the same person from whom the plaintiff states he purchased it in 1898. For the purpose of supporting this assertion the defendant, among others, presented the following documents:

(1) A certificate of an act of conciliation effected between herself and Jose Torres, in the justice court of Intramuros, July 27, 1901, in which act the now defendant, Dona Paula de Guzman, stated that some three years before she had agreed with Torres upon the purchase of the lot in question, which was then the property of the said Torres, the consideration being the sum of 270 pesos; that this was paid to him by her, he receipting for the amount stated; and that, having been informed that the said Torres had again sold the same lot to another person, she now made demand upon him to rescind this second sale, in case it had actually consummated, inasmuch as he was without right to sell the lot, it no longer being his. To this Jose Torres replied that his cousin, Candido de Vera, had entered into negotiations concerning the sale of this lot with a woman called Romana Baza; that two or three days after, the woman Romana returned, accompanied by Paula de Guzman, and that all three agreed upon the sale for the sum of 270 pesos, on account of which the women delivered 100 pesos to his said cousin; that subsequently Dona Agueda Asuncion, a cousin of Dona Paula (and the wife of the present plaintiff) delivered to him the remainder—170 pesos; that subsequently Dona Paula and Dona Romana presented to him and his cousin a document in which the receipt of these sums was acknowledged, which document they signed, and the same was attached to the deed; and that since that time he had made no attempt to sell the lot to any other person, inasmuch as it had ceased to be his property.

(2) Another act of conciliation between Dona Paula de Guzman and Dona Antera Macario, dated the 15th of July, 1901, in which the latter acknowledged that she delivered to the former the sum of 270 pesos, with which the price of the lot purchased from Jose Torres was paid.

(3) A copy of an affidavit presented by the defendant on the 9th of August, 1901, to the land-tax office of the city of Manila, in which it is stated that the lot in litigation is her property.

During the probatory period of this case D. Jose Torres and D. Candido de Vera testified that the sale of the said lot was effected as stated in the act of conciliation between the said Torres and Dona Paula de Guzman, and that the sale was made to Dona Agueda Asuncion. It is not necessary for us to express here our opinion as to the legal weight of this testimony because we do not consider it of any importance with respect to this decision.

It is well to state that neither the plaintiff nor the defendant has presented any document whatsoever evidencing the contract of sale which they respectively allege was entered into with D. Jose Torres, the former owner of the lot in question, and that the plaintiff admits as true that when he purchased the said lot the defendant's house was already standing on it. He states that he does not know how long the building has been standing. The defendant alleges that it was built some fifteen years ago.

The possessory title to the lot in question, recorded in the registry of property in the name of the plaintiff, unquestionably gives him the right to bring an action of this character, under the provisions of article 1546 of the Code of Civil Procedure; it is not, however, sufficient to show that one has capacity to sue in order to recover judgment in an action for unlawful detainer. It is necessary for him to further show that the defendant falls within one of the provisions of article 1.547 of the said law, because it is only in such cases that the action for unlawful detainer will lie.

The plaintiff has done nothing more than to prove his right of possession as the owner of the lot in litigation. He has not attempted to introduce any evidence tending to show that the defendant is merely a precarious tenant occupying the lot by his tolerance, notwithstanding the fact that she denied this allegation from the beginning and affirms in turn that she is in possession of the lot as owner thereof. The plaintiff has taken the principal issue for granted and has not proved the fact which is the basis of his complaint.

In view of the result of an examination of the record we do not consider it sufficiently proven that the possession of the defendant is merely precarious, especially in view of the fact that she was in possession of the lot when the plaintiff purchased it, as he himself has admitted in the trial. From this it would appear to be a logical conclusion that she did not enter into possession of the lot by mere tolerance of the plaintiff as alleged by him in his complaint. It is possible that the possession of the defendant may have resulted originally from a gratuitous license of the former owner of the property or from a contract of lease entered into with him, but as this point was not in issue at the trial it can not be passed upon in our decision. It is evident that if there was a contract of lease the defendant can not be regarded as a precarious tenant, because this is not the legal character of the possession of lessees.

It not having been clearly proven that the defendant is merely a precarious tenant of the lot in question and of which she claims to be the owner, we are of the opinion that the eviction prayed for by the plaintiff can not be granted. The parties should determine their respective rights in the corresponding declarative action.

The burden is upon the plaintiff to establish all the facts which are necessary to show that he is entitled to recover in an action of unlawful detainer, and in case he fails to do so his action must be dismissed. (Judgment of the supreme court of Spain, January 29, 1897.)

The supreme court of Spain has also held, in a judgment dated April 8, 1897, that controverted claims as to property rights can not be passed upon in an action of unlawful detainer, it being the duty of the courts in such cases to do nothing more than to examine and pass upon the propriety of the action brought with respect to the person sought to be evicted. Although the title shown by the plaintiff might be sufficient in another action to show that the defendant is without rights, it can not produce the effect of disturbing the actual situation de facto of the parties.

We therefore reverse the judgment appealed and hold that the eviction prayed for by D. Fidel Rivera must be denied, reserving to the parties the right to determine their respective claims in the proper action, without special imposition of costs herein. So ordered.

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

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