

1 Phil. 122

[G.R. No. 35. February 11, 1902]

**MIGUEL FABIE, PLAINTIFF AND APPELLEE, VS. FELICIANA DE GUZMAN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

LADD, J.:

This is an appeal from the judgment given by the Court of First Instance of Binondo in favor of the plaintiff in the action for eviction commenced for the purpose of recovering the possession of a basement story occupied by the defendant. The plaintiff alleged that he was the owner of the house of which the basement story formed a part and that the defendant had been occupying the said basement as a tenant at will without paying any rent therefor and that he had given her a month's notice to vacate the place.

The plaintiff alleges that the property belongs to him by virtue of the will of Dofia Tiburcia Ortiz, deceased, who at the time of her death was the owner of the same. The plaintiff has filed a copy of the notarial instrument from which it appears that the Court of First Instance of Binondo had ordered the registration of a document which is said to be the will of the said party by which the latter constitutes the plaintiff her universal heir. At the trial before the lower court the defendant asked the stay of the proceedings for two reasons: First, that the defendant had moved for an injunction permitting her to retain and recover the possession of the house in question as against the plaintiff and that the defendant had moved the Court of First Instance of Tondo from which the judgment was sought for the consolidation of those proceedings with the present action, and second, that the defendant had filed a complaint before the Court of First Instance of Intramuros for the falsification of the will of Doña Tiburcia.

The court below, without having previously ruled upon the petition for stay of the proceedings, ordered that the defendant answer the complaint on its merits. The attorney for the defendant then interposed two dilatory exceptions, namely, the want of jurisdiction

of the court and the pendency of another action—the last based upon the fact that there was still pending the injunction as well as the demand for the exhibition of the will of Dofia Tiburcia and a probate proceeding, which she stated were pending in the court of Quiapo. From copies of the documents taken from the judicial records filed by the defendant at the trial held in the court below it appears indeed that the said injunction proceeding had been commenced. Concerning the petition for the consolidation as well as the proceedings before the Court of Quiapo, there were no proofs other than the statement of the attorney. No proof whatever was presented concerning the criminal complaint except the statement made by the attorney that the same had been filed.

It appears from the record that the defendant in spite of having been given by the court full opportunity to do so did not answer to the merits of the complaint. The plaintiff had the right therefore to have judgment dictated in his favor unless the dilatory exceptions interposed by the defendant should be sustained, or unless the court had committed error in not staying the proceedings in order to await the determination of the motion for consolidation as well as of the criminal case.

We believe that the dilatory exceptions were properly overruled’.

The jurisdiction of the court appears to be unquestionable, since this is one of the cases included in No. 2 of article 1545 of the Code of Civil Procedure and the property is situated within the jurisdiction of the court.

With reference to the exception of the pendency of another action, we understand that the defendant can not avail herself of this objection in a summary proceeding like the present one.

Supposing that a petition praying for the consolidation of these proceedings with those for injunction had been presented, we are of the opinion that it should have been denied (art. 148, Code of Civil Procedure), and therefore the course of the court below was proper in refusing to suspend the proceedings on such grounds.

Inasmuch as the defendant did not prove and in our opinion did not even allege in the record that the criminal complaint had been admitted, she therefore had no right to stay of proceedings in accordance with the provisions of article 497 of the Code of Civil Procedure.

In his argument at the hearing of this appeal, the defendant asked for the hearing of evidence at second instance in order to set forth the facts concerning the criminal

complaint. This request should be denied on the ground that it has not been declared that the proofs would disclose that the said complaint had been admitted, and furthermore because it does not appear that the defendant has been prevented from presenting said proofs in the court below. (Art. 845 of the Code of Civil Procedure.) The judgment is affirmed with costs taxed against the appellant.

Arellano, C. J., Torres, Cooper, Willard, and Mapa, JJ., concur.

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