2 Phil. 622

[G.R. No. 1347. October 29, 1903]

NICASIO VELOSO, PLAINTIFF AND APPELLEE, VS. ANG SENG TENG, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This is an action to recover possession of real estate brought under section 80 of the Code of Civil Procedure, before a justice of the peace of Manila on November 5, 1902. From a judgment against him in that court, the defendant appealed to the Court of First Instance. Judgment was there rendered against him and he has brought the case here.

1. The first assignment of error relates to the defendant's plea of former adjudication. On February 8, 1902, the plaintiff commenced against the defendant, before a justice of the peace of Manila, an action similar to the present one, for the recovery of the possession of the same real estate. In that action the justice, on April 19, 1902, rendered judgment against the plaintiff. The plaintiff appealed from the judgment, and after the case had been tried in the Court of First Instance, but before judgment had been rendered therein, the court, at the request of the plaintiff, on June 19, 1902, dismissed the action without prejudice to the right of the plaintiff to commence another action for the same cause. The court below held that these proceedings were no bar to the present suit. In this there was no error. The decision of June 19 terminated that case. It was the final judgment from which an appeal could have been taken. It expressly reserved to the plaintiff the right to commence the action again. The court had jurisdiction of the parties and the subject-matter of that suit. It had the power to make the order. Whether right or wrong, it can not be attacked in this case, the defendant not having appealed therefrom.

2. The second assignment of error finds no support in the record. Not only does it not

appear that any exception was taken to the order of the court allowing the plaintiff to amend his complaint, but it affirmatively appears that such amendment was' made by agreement of the parties. (Bill of exceptions, p. 13.)

3. The claim of the appellant that the court should have granted his motion for a continuance made on February 2, 1903, can not be sustained. Section 141 of the Code of Civil Procedure is, in part, as follows: "Rulings of the court upon minor matters such as adjournments, postponements of trials, the extension of time for filing pleadings and motions and other matters addressed to the discretion of the court in the performance of its duties, shall not be subject to exception." This section would ordinarily be a sufficient answer to the exception which the defendant took to the order of the court refusing the continuance. It is claimed, however, by the defendant that there was an abuse of discretion and that an exception lies in such cases. Admitting, without deciding, that this can be done, yet we see no abuse of discretion in the order. After the trial had commenced on December 27, 1902, the defendant went to China, not to return until May 1, 1903. After his departure, the case was set for hearing on January 2, and five continuances were afterwards obtained by < the defendant, without any suggestion that the presence of the defendant at the trial was necessary. For example; On January 27 Seiior Rodriguez, one of the attorneys for the defendant, filed a motion asking that the case be not taken up that day, because he could not attend and that it be set for hearing any day the next week. He then said nothing about the necessity of having the defendant present as a witness. The continuance was asked also on the ground that two of the defendant's attorneys were parties to a proceeding in another court, then being heard, and that the third could not try the case alone. The defendant had already obtained five continuances. The last were granted on the understanding that the defendant would ask for no more. There was no abuse of discretion for refusing to continue the case on this ground.

The parties at the beginning of the trial had agreed that the case should be tried in the English language. The failure of the defendant's attorneys to be present in court during parts of the trial did not nullify this stipulation.

4. The signing by the judge of findings and of a decision prepared by the attorney of the plaintiff was not error of law.
5. The third finding of fact, to wit, that the reasonable value of the rent of the premises during the time in question was 1,000 pesos a month, is fully sustained by competent evidence.
6. The fourth finding of fact is as follows:

> "Fourth. That during the defendant's occupation from the 9th day of January, 1902, he has misused the houses, and has caused damage to them in the sum of $4,000, money of the United States."

This finding is plainly and manifestly against the evidence. In fact, there was no evidence in the case from which the court could say that any of these damages were caused after January 9, 1902. The property had been occupied by the defendant as a cigar factory since 1899. Neither one of the two architects who at the request of the plaintiff's agent examined the property stated when the damage was done. The plaintiff's agent testified as to the condition of the property in 1899, when the plaintiff acquired title, as compared with its condition at the time of the trial. But no witness testified to its condition on January 9, 1902, as compared to its present condition. The testimony of the witness Sim Kee Lim only came down to January, 1900. Considering the nature of the damages, it is more than probable that they were largely caused prior to January 9, 1902. They consisted principally of injuries done to the building by its use as a cigar factory.

But, in the view which we take of the case, it is immaterial whether these damages were caused before or after the said 9th day of January. This summary action of forcible entry and detainer is defined in section 80 of the Code of Civil Procedure. By the first part of the section, a landlord, as against a tenant whose right to the possession has terminated is entitled to recover the possession and damages. Under the last part of the section which relates only to a tenant who has failed to pay the rent for thirty days after notice, the landlord can recover the possession, rent due, and damages; The case at bar falls under the first part and not under the second, and the plaintiff in addition to the possession is entitled to recover "damages." What is meant by the word "damages?" It certainly can not refer to damages caused to the property while the tenant was in the lawful possession of it. For such damages the landlord may have a right of action. But such right of action must be exercised in an ordinary suit. It can not be made the subject of a summary proceeding before a justice of the peace, under said section 80. Damages caused to the property, after the possession has become unlawful, stand upon a different footing. But even as to such damages we think that there can be no recovery in this proceeding, in view of the provisions of our Law. While section 80, if it stood alone, might give rise to some doubt, this is removed when section 84 is considered. This distinctly says that the judgment shall be for "all arrears of rent or a reasonable compensation for the use and occupation of the premises." This last clause is a definition of the word "damages" found in section 80, and indicates that they are only those damages which are caused by loss of the use and occupation of the property. This action has

to do only with the right to the possession. The ownership of the property is not necessarily involved. We should therefore not expect to find any provision allowing a recovery of damages for
substantial injuries to buildings of which the plaintiff might not be the owner.

7. It is suggested by the appellant that the finding by the court below, that a certain document presented at the trial by the defendant was a forgery, was error because the document was never offered in evidence. It is not claimed that the finding itself was contrary to the evidence." This error, if it existed, could not possibly have prejudiced the defendant.

We find no error in the record except as to the allowance of damages.

By section 496 of the Code of Civil Procedure, we are authorized to modify the judgment of the court below There is, therefore, no necessity for a new trial.

The judgment of the court below is modified by striking therefrom the finding of fact above quoted as to the damages and that part thereof which requires the defendant to pay the plaintiff $4,000, in money of the United States. As so modified it is affirmed. This affirmance is without prejudice to the right of the plaintiff to maintain an ordinary action in a court of competent jurisdiction to recover such damages as he may show himself entitled to. Neither party is entitled to recover of the other any costs in this court. Judgment will be entered accordingly twenty days after the filing of this decision.

Arellano, C. J., Torres, Cooper, Mapa, and *McDonough, JJ.,* concur.

Johnson, J., did not sit in this case.

DECISION OF MOTION FOR REHEARING.

WILLARD, J.:

The appellant has moved for a reargument, on the ground that the tenant of the building was the cigar factory or its owner, and not the defendant; and that the factory or its owner, and not the defendant, is liable in this suit.

No such point as this was made in the court below nor in the brief of the appellant in this court; nor is it covered by any assignment of error. The assignments of error 9 and 10 are too general to present this question. This would be a sufficient reason for denying the

motion. It may be added, however, that the following facts appear:

The title which the appellant has seen fit to give to the case in his motion, now nowhere appears in any papers in the suit. The amended complaint names Ang Seng Teng as defendant. The answer is entitled "Ang Seng Teng, Gerente de la Fabrica Cataluna, defendant," and admits that the defendant is in possession, and has been in possession for three years, by virtue of a contract of lease executed by plaintiff to Palanca and duly assigned to the defendant because he was the successor of Palanca in the management of the factory.

The judgment and decision follows this answer and judgment is entered against "Ang Seng Teng, Gerente de la Fabrica Cataluna."

Arellano, C J., Cooper, Mapa, McDonough, and *Johnson, JJ.,* concur.

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