

Domingo T. Dikit, Petitioner vs. *Ramon A. Yeasiano, et al, Respondents*, G. R. No. L-3637, May 23, 1951.

PLEADING & PRACTICE: UNLAWFUL DETAINER; PRELIMINARY PREVENTIVE INJUNCTION CANNOT ISSUE IN UNLAWFUL DETAINER. — In an action for unlawful detainer,

the judge of the municipal court issued a writ of preliminary injunction ordering the occupant of the premises in question, his attorneys, representatives, agents and employees to refrain from entering or making use of the same. **HELD:** If the action in which the preliminary injunction was issued were of forcible entry, the judge did not act in excess of his jurisdiction in issuing said preliminary injunction, under section 3 of Rule 72 but as the action was of unlawful detainer, the judge acted in excess of his jurisdiction and, therefore, the writ of preliminary injunction issued must be set aside as null and void.

Jose Cando for appellant.

Assistant Solicitor General Inocencio Rosal and Solicitor Jesus A. Avanceña for appellee.

DECISION

FERIA, J.:

This is a special civil action of certiorari against the respondents based on the ground that the respondent Judge of the Municipal Court of Manila acted in excess of the court's jurisdiction in issuing a writ of preliminary injunction, upon a petition *ex parte* of the respondent Consolidated Investment Bldg., Inc., as plaintiff, against the petitioner as defendant in the civil action or case No. 9708 of the said Municipal Court to eject the latter from the premises leased to him by the former. In said writ the respondent Judge ordered that said defendant, his attorneys, representatives, agents and employees refrain from entering or making use of the lobby and mezzanine of the Consolidated Investment Building at Plaza Goiti, Manila.

There is no question or dispute between the parties and they both agree that if the action instituted by respondent Consolidated Investment Bldg. Inc. against the petitioner Domingo T. Dikit in said civil case No. 9708 were of forcible entry, the respondent Judge did not act in excess of the court's jurisdiction in issuing said preliminary injunction under Section 3, Rule 72 of the Rules of Court; but if it were of unlawful detainer, the respondent Judge acted in excess of the court's jurisdiction and, therefore, the writ of preliminary injunction issued must be set aside as null and void (*Piit vs. De Lara and Velez*, 58 Phil. 765, 767; *Sevilla vs. Judge De los Santos*, G.R. No. L-1980, promulgated on May 25, 1950).

Section 1, Rule 72 of the Rules of Court, which defines and distinguishes forcible entry from unlawful detainer, provides:

SECTION 1. Who may institute proceedings, and when.

—Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a landlord, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such landlord, vendor, vendee, or other person, may, at any time within one year after such unlawful deprivation or withholding of possession bring an action in the proper inferior court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Applying the above quoted provisions to the present case, we are of the opinion, and so hold, that the facts alleged in the complaint filed in said case No. 9780, constitute an action of unlawful detainer and not of forcible entry, and therefore the respondent Judge acted in excess of the Municipal Court of Manila's jurisdiction in issuing the writ of preliminary injunction complained of. The pertinent parts of the complaint reads as follows:

That with the aforementioned representations and assur-

ances given to herein plaintiff as a basis, defendant had applied for the lease of the lobby and mezzanine of the Consolidated Investments Building located at the Plaza Goiti, City of Manila, and within the jurisdiction of this Honorable Court, under the basic conditions of constructing the partitions that will separate the lobby from the side entrances of the building, to pay an advance rental of P30,000.00 applicable to the last six (6) months under a proposed 5-year lease-contract, and to pay in advance the current monthly rental of P5,000.00 from the time that the construction of the separating walls or partitions is completed.

x x x x x x x x

That by reason and on the strength of said undertakings of the defendant, the defendant succeeded in getting the possession of the lobby and mezzanine of the Consolidated Investment Building, proceed with the construction of the separating walls or partitions mentioned above and carried out the remodeling work that said defendant would require to put the premises in question in condition to be used by "The Bank of Manila" which, the said defendant had assured the plaintiff, will start operating early in July, 1949.

That the monthly rental of P5,000.00 would accrue and become payable in advance within the first five (5) days of each month upon completion of the construction of the separating walls or partitions mentioned above.

x x x x x x x x

That having failed to obtain the proper license to operate his proposed "The Bank of Manila", the defendant on September 1, 1949, had relinquished and turned over to the plaintiff the lobby and mezzanine of the Consolidated Investments Building, and said defendant had accepted the position of Vice-President of the proposed "The Bank of Manila" under a new group of capitalists.

That subsequently thereafter defendant regained possession of the lobby and mezzanine of the Consolidated Investments Building by representing to the plaintiff that he (the defendant) was able to obtain the cooperation of certain Filipino residents of Hawaii who were ready to capitalize his proposed "The Bank of Manila" and that said capitalists were willing to pay to herein plaintiff an advance rental of P100,000.00 applicable to the last months under a 5-year lease-contract, at the rate of P5,000.00 per month. x x x

x x x x x x x x

That defendant, notwithstanding the several extensions of time requested by him, not only has failed to pay the advance rental promised by him, but also has failed and refused to pay unto the plaintiff the current rentals corresponding to the months of October and November, 1949, at the rate of P5,000.00 monthly, notwithstanding the repeated and persistent demands made on him by the plaintiff for at least five days prior to the filing of the complaint.

That plaintiff likewise had demanded of the defendant that the latter vacate the lobby and mezzanine of the Consolidated Investments Building, which demand was made for more than five days prior to the filing of this complaint, but said defendant has failed and refused to comply with said friendly demand up to the present time.

The plaintiff's action was not of forcible entry, but of unlawful detainer, because according to said Section 1 of Rule 72, forcible entry is the act of depriving a person of the material or actual possession of land or building or of taking possession thereof by force, intimidation, threat, strategy or stealth, against the will or without the consent of the possessor; while unlawful detainer is the act of unlawfully withholding the possession of a land or building against or from a landlord, vendor, vendee or other persons, after the expiration or termination of the detainer's right to hold possession by virtue of a contract, express or implied. In forcible entry, the possession of the intruder or person who deprives another of the possession of the land or building is illegal from the beginning, because his entry into or taking possession thereof is made against the will or without the consent of the

former possessor. In unlawful detainer the possession of the detainer is originally legal or lawful but it becomes illegal only after the expiration or termination of his right to hold possession of the land or building by virtue of a contract, as the possession of a tenant after termination of the contract of lease for non-payment of the rents due or violation of the terms of said contract. In the present case, according to the above quoted complaint, the petitioner took possession of the part of the building leased, not against the will or without the consent, but with the express consent of the owner or possessor thereof by the virtue of the contract of lease entered between them, and therefore his possession of the premises leased was legal or lawful from the beginning, and it became illegal only after the termination of his right to continue in possession of said premises for having failed to pay the rents or other conditions of the contract of lease. The fact that the petitioner obtained the consent of the lessor to enter into said contract and take possession of the premises leased through false misrepresentation as alleged in the complaint, did not make petitioner's possession illegal from the beginning and the action instituted against him one of forcible entry. The stealth, strategy or fraud employed to deprive a person of his possession of a land or building under Section 1 of Rule 72, are the means used by the intruder to take possession of said land or building, without the consent or knowledge of the person in possession thereof. Such as, for instance, entering into the possession of a house taking advantage of the absence therefrom of its possessor or inhabitant, or after the latter has gone out of it because he was deceived or told by the intruder to go to another place at the request of one of his friend or relative. ©

Besides, in an action of forcible entry, no previous demand to vacate is required by law before the filing of the action, while Section 2 of Rule 72 it requires that in an action of unlawful detainer by a landlord against his tenant, such demand is required, and compliance with this demand or condition is alleged in the last quoted paragraph of the complaint.

In view of the foregoing, the writ of preliminary injunction was issued by the respondent Judge in excess of the court's jurisdiction, and therefore it is set aside with costs against the respondent Consolidated Investments Bldg. Inc.

Paras, Pablo, Bengzon, Padilla, Tuason; Montemayor; Jugo and Bautista Angelo. — J.J. concur

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