

5 Phil. 204

[ G.R. No. 2263. November 02, 1905 ]

**CIPRIANO SANIDAD, PLAINTIFF AND APPELLEE, VS. SIMON CABOTAJE  
DEFENDANT AND APPELLANT.**

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

**TORRES, J.:**

On the 12th of June, 1903, counsel for plaintiff Cipriano Sanidad presented a petition to the Court of First Instance of Ilocos Sur for the partition of the property set forth in the petition, alleging that he had inherited the same from his daughter, Maria Sanidad, who in turn inherited it from her mother, Sergia Cabotaje, the wife of the plaintiff, both deceased, said partition to be made subject to the rights of the respective parties; and for judgment against the defendant in the sum of 520 pesos, Mexican currency, as profits accruing to plaintiff from the said property and that in case a partition could not be had without detriment to the rights of both parties the property be sold at public auction and the proceeds divided between the parties, after deducting the cost of the proceedings.

The defendant, Simon Cabotaje, having been duly summoned, on the 18th of July, 1903, demurred to the complaint upon the ground set forth in paragraph 4 of section 91 of the Code of Civil Procedure, alleging that he was not a necessary party to the action and had no interest therein, and requesting that the complaint be amended, making the Rev. Adriano Garces, who had an interest adverse to that of the plaintiff, the only party defendant.

The demurrer was overruled and on the 20th of August of the same year the defendant filed his answer to the complaint, praying that the

case be dismissed, with costs to the plaintiff, denying the allegations in paragraphs 1, 5, 7, and 8, and averring that he had no knowledge of the statements contained in paragraph 9, and that Father Garces, a resident of Dagupan, Pangasinan, was the sole owner of the property claimed, and was therefore the only necessary party to the action; and that he, the defendant, Simon Cabotaje, was a mere administrator of the said property, and consequently not a proper party to the action.

The court, after hearing the evidence introduced at the trial, entered judgment on the fourth day of February, 1904, in conformity with the prayer in the complaint, and directed a partition between plaintiff and defendant of the property described in the complaint. The defendant moved for a new trial, which was denied, to which ruling of the court he excepted.

Section 114 of the Code of Civil Procedure provides:

“Every action must be prosecuted in the name of the real party in interest. \* \* \*

“Otherwise

than as provided in this section, all persons having an interest in the subject of the action, and in obtaining the relief demanded, shall be joined as plaintiffs.

“Any person should be made a defendant who has or claims an interest in the controversy or subject-matter thereof adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein.”

Section 122 of the same code provides:

“The court may determine any controversy between parties before it, if it can be done without prejudice to the rights of others, or by preserving their rights for future action; but when a complete determination of the controversy can not be had without the presence of other parties, the court must order them to be brought in,

and to that end may order amended or supplemental pleadings, or a cross complaint, to be filed, and summons therein to be duly issued and served.”

The failure to comply with the rules laid down by the Code of Civil Procedure for the trial and proper determination of cases involving questions controverted by the parties prevents the court from duly deciding said questions and arriving at a conclusion upon the merits of the case, and makes it necessary to decide, in the first place, such questions as relate to the form of the action-that is to say, as to whether or not the procedure laid down by the law has been complied with.

It is not necessary, therefore, to pass upon the validity of the transfer of the property to Father Garces, nor to decide the other questions raised by the plaintiff. The decision of this court must be confined to the question of form raised by the demurrer and urged in the answer.

It is the duty of this court to decide whether or not, under the sections of the Code of Civil Procedure above quoted, Father Adriano Garces should be joined with the defendant, Simon Cabotaje, as a necessary party to this action.

Assuming, without deciding, that the property claimed in the complaint was actually in the possession of the said Father Garces, any judgment that might be rendered in this case in favor of the plaintiff would be necessarily void and of no effect if Simon Cabotaje were the only party defendant to the suit, since the property claimed is in the possession of a third party. For that reason it becomes impossible to arrive at a final determination of the case unless Father Garces is joined as a party defendant therein. This case comes within the provisions of the latter part of section 122 of the Code of Civil Procedure, and it should therefore be directed that the complaint be amended so as to include all necessary parties for the final settlement of the case.

For the foregoing reasons we are of opinion that the judgment of the court below should be reversed, the proceedings in this case set aside, and the plaintiff is hereby allowed to amend his complaint as aforesaid. After the expiration of twenty days from the date hereof let judgment be entered accordingly, and the case remanded to the trial court for further proceedings in accordance with the law. So ordered.

*Arellano, C. J., Mapa, Johnson, Carson, and Willard, JJ., concur.*

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