

94 Phil. 760

[ G.R. No. L-6206. April 13, 1954 ]

**AURELIO G. GAVIERES, PLAINTIFF AND APPELLANT, VS. EMILIO SANCHEZ, LORENZO T. OÑA, THE PRESIDENT OF THE HACARIN DAIRY FARM, INC., AND THE PRESIDENT OF THE REHABILITATION FINANCE CORPORATION, DEFENDANTS AND APPELLEES.**

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

**MONTEMAYOR, J.:**

On December 23, 1950, plaintiff-appellant Aurelio G. Gavieres filed a complaint in the Court of First Instance of Rizal against Emilio Sanchez, Lorenzo T. Oña, the President of the Hacarín Dairy Farm Corporation, and the President of the Rehabilitation Finance Corporation, alleging that in 1931 he was the registered owner and possessor of 1/3 of lot No. 2386 of Cadastre No. 13 of San Miguel de Mayumo, Bulacan, covered by Original Certificate of Title No. 12463; that on February 6, 1931, he sold his one-third share of the parcel to Emilio Sanchez for P10,000 payable as follows: P200 on February 6, 1931, P1,800 at the end of the month, and the balance of P8,000 in April of the same year; that Sanchez immediately took possession of the property purchased and that although he had paid only P470 of the entire price of P10,000, in the same year he sold the property to Lorenzo T. Oña with right to repurchase for P4,000 and upon his failure to make the repurchase Oña consolidated his ownership and secured the cancellation of Original Certificate of Title No. 12463 and the issuance to him of Transfer Certificate of Title No. 6640; that in 1941 Oña sold the same property to the Hacarín Dairy Farm Corporation resulting in the cancellation of Transfer Certificate of Title No. 6640 and the issuance of Transfer Certificate of Title No. 27257 in the name of the purchaser; and that on September 29, 1947, the Hacarín Dairy

Farm Corporation mortgaged the property to the Rehabilitation Finance Corporation in the amount of P100,000. The complaint prays among other things that plaintiff be declared real owner and possessor of the property; that the sale of the same to Sanchez be declared null and void because of failure to fulfill the conditions of the sale; that the pacto de retro sale to Oña be declared illegal, including the issuance of Transfer Certificate of Title No. 6640 to him; that the sale by Oña to the Hacarín Dairy Farm Corporation be declared invalid and illegal, including the issuance of the corresponding transfer certificate of title and that the mortgage of the Rehabilitation Finance Corporation be declared illegal and invalid, and that furthermore defendants be made to pay damages in the sum of P20,000.

Sanchez filed an answer stating that the facts alleged in the complaint did not constitute sufficient cause of action; that the action had already prescribed, and that the court had no jurisdiction to hear and decide the case. Oña filed a motion to dismiss on the ground of improperly laid venue. The Hacarín Dairy Farm Corporation equally filed a motion to dismiss on the ground of lack of sufficient cause of action and prescription. And, the Rehabilitation Finance Corporation also filed a motion to dismiss on the ground of lack of sufficient cause of action. Acting upon these pleadings the trial court presided over by Judge Gatmaitan issued an order dated January 20, 1951 dismissing the complaint. We reproduce said order.

“Considering the motions to’ dismiss filed by Lorenzo T. Oña, the Hacarín Dairy Farm and the RFC, the Court finds that all these motions are well founded. If the action can be considered as an action to recover the property described in the original of Transfer Certificate of Title No. 12463 of Bulacan, it is the Bulacan Court that has jurisdiction; if, on the other hand, it should be considered as an action to rescind the contract on the ground of failure to pay the balance of the purchase price, considering that according to paragraph 2 of the complaint, the period within which to pay the balance of the purchase price expired in April, 1931, the cause of action accrued since then; and as the complaint was filed only on

December 23, 1950, a period of more than eighteen (18) years had elapsed from the date when the cause of action accrued to the date when the complaint was filed in that case, it is clear that the same is already barred by prescription; under Rule 8, Section 1, v subpar. e, prescription may be availed of in a motion to dismiss. Even assuming that the Court has venue over the case, and that the action is to recover real property as from the allegations of the complaint, it is a case where plaintiff, according to him, was deprived of the ownership of the property since 1931; again it will appear that the action has prescribed since defendants got title in 1931. In fact, the complaint should be considered more of an action to recover the property rather than to a sum of money (Inton vs. Quintana, L-1236, 26 May 1948; Baguiso vs. Barrios, 43 Off. Gaz., 2031, August 30, 1946). There is even no showing that defendant Oña, Hacarin Dairy Farm and the RFC were purchasers in bad faith; even as to them, there can be no cause of action. The principal defendant Emilio Sanchez has not filed any motion to dismiss; but considering the tenor of his answer, he also raises the preliminary question that there is no cause for action; that the action has prescribed and that the Court has no jurisdiction over the case. From the view we have adopted as shown in the above discussion, it will appear even as against Emilio Sanchez, the action has prescribed. The result will be that the case shall be dismissed.

IN VIEW WHEREOF, complaint dismissed, without costs.

SO ORDERED.”

Plaintiff Gavieres first appealed from the above-quoted order to the Court of Appeals which tribunal after a study of the appeal indorsed the case to us on the ground that only questions of law were involved. After a careful study of the issues involved, we agree with the trial court in its order subject of the present appeal, specially as it holds that venue was improperly laid. In several decisions rendered by this Tribunal, as late as 1950, we have held that under Section 3, Rule 5 of the Rules of Court, an action affecting title to or recovery of possession of real property must be commenced and tried in the province

where said property lies; that an action for the annulment or rescission of the sale of property does not operate to efface the fundamental and prime objective and nature of the action which is to recover said real property, and that under Rule 8, section 1(b), a defendant may file a motion to dismiss the action when venue is improperly laid.<sup>[1]</sup>

There is no question that the present action should have been brought in the Province of Bulacan where the land lies, and that in bringing the action in the Province of Rizal, venue was improperly laid thereby justifying the order of dismissal. True, not all the defendants asked for dismissal on this ground but the purpose of their pleadings can well be interpreted as to attack venue. And as to prescription, as already said, there is every reason to believe and to find the dismissal to be well-founded on prescription, whether the action be considered as one to recover a sum of money or to recover real property.

In view of the foregoing, the order appealed from is hereby affirmed, with costs against appellant.

*Paras, C. J., Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo, and Labrador, JJ., concur.*

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<sup>[1]</sup> *Inton vs. Quintana*, 81 Phil., 97, 45 Off. Gaz., No. 12, p. 5430 *Enriquez vs. Macadaeg*, 84 Phil., 674, 47 Off. Gaz., No. 3, p. 1207; *Munoz vs. Llamas*, 87 Phil., 737.

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