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[G.R. No. L-4935. May 28, 1954]

J. M. TUASON & CO., INC., REPRESENTED BY ITS MANAGING PARTNER, GREGORIO ARANETA, INC., PLAINTIFF AND APPELLEE, VS. QUIRINO BOLAÑOS, DEFENDANT AND APPELLANT.

D E C I S I O N

REYES, J.:

This is an action originally brought in the Court of First Instance of Rizal, Quezon City Branch, to recover possession of registered land situated in barrio Tatalon, Quezon City.

Plaintiff's complaint was amended three times with respect to the extent and description of the land sought to be recovered. The original complaint described the land as a portion of a lot registered in plaintiff's name under Transfer Certificate of Title No. 37686.of the land record of Rizal Province and as containing an area of 13 hectares more or less. But the complaint was amended by reducing the area to 6 hectares, more or less, after defendant had indicated the plaintiff's surveyors the portion of land claimed and occupied by him. The second amendment became necessary and was allowed following the testimony of plaintiff's surveyors that a portion of the area was embraced in another certificate of title, which was plaintiff's Transfer Certificate of Title No. 37677. And still later, in the course of trial, after defendant's surveyor and witness, Quirino Feria, had testified that the area occupied and claimed by defendant was about 13 hectares, as shown in his Exhibit 1, plaintiff again, with the leave of court, amended its complaint to make its allegations conform to the evidence.

Defendant, in his answer, sets up prescription and title in himself

thru “open, continuous, exclusive and public and notorious possession (of the land in dispute) under claim of ownership, adverse to the entire world by defendant and his predecessors in interest” from “time in- memorial”. The answer further alleges that registration of the land in dispute was obtained by plaintiff or its predecessors in interest thru “fraud or error and without knowledge (of) or notice either personal or thru publication to defendant and/or predecessors in interest.” The answer therefore prays that the complaint be dismissed with costs, and plaintiff required to reconvey the land to defendant or pay its value.

After trial, the lower court rendered judgment for plaintiff, declaring defendant to be without any right to the land in question and ordering him to restore possession, thereof to plaintiff and to pay the latter a monthly rent of ?132.62 from January, 1940, until he vacates the land, and also to pay the costs.

Appealing directly to this court because of the value of the property involved, defendant makes the following assignment of errors;

> “I. The trial court erred in not dismissing the case on the ground that the case was hot brought by the real party in interest.
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> “II. The trial court erred in admitting the third amended complaint.
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> “III. The trial court erred in denying defendant’s motion to strike.
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> “IV. The trial court erred in including in its decision land not involved in the litigation.
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> “V. The trial court erred in holding that the land in dispute is covered by transfer certificates of Title Nos. 37686 and 37677.
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> “VI. The trial court erred in not finding that the defendant is the true and lawful owner of the land.
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> “VII.
> The trial court erred in finding that the defendant is liable to pay

the plaintiff the amount of P132.62 monthly from January, 1940, until he vacates the premises.

"VIII. The trial court erred in not ordering the plaintiff to reconvey the land in litigation to the defendant."

As to the first assigned error, there is nothing to the contention that the present action is not brought by the real party in interest, that is, by J. M. Tuason & Co., Inc. What the Rules of Court require is that an action be brought *in the name of*, but not necessarily by, the real party in interest. (Section 2, Rule 2.) In fact the practice is for an attorney-at-law to bring the action, that is to file the complaint, in the name of the plaintiff. That practice appears to have been followed in this case, since the complaint is signed by the law firm of Araneta & Araneta, "counsel for plaintiff" and commences with the statement "Comes now plaintiff, through its undersigned counsel." It is true that the complaint also states that the plaintiff is "represented herein by its Managing Partner Gregorio Araneta, Inc.", another corporation, but there is nothing against one corporation being represented by another person, natural or juridical, in a suit in court. The contention that Gregorio Araneta, Inc. can not act as managing partner for plaintiff on the theory that it is illegal for two corporations to enter into a partnership is without merit, for the true rule is that "though a corporation has no power to enter into a partnership, it may nevertheless enter into a joint venture with another where, the nature of that venture is in line with the business-authorized by its charter." (Wyoming-Indiana Oil Gas Co, vs. Weston, 80 A. L. R., 1043, citing 2 Fletcher Cyc. of Corp., 1082.) There is nothing in the record to indicate that the venture in which plaintiff is represented; by Gregorio Araneta, Inc. as "its managing partner" is not in line with the corporate business of either of them,.

Errors II, III, and IV, referring to the admission of the third amended complaint, may be answered: by mere reference to section 4 of Rule 17, Rules of Court, which sanctions such amendment. It reads:

> "SEC. 4. *Amendment to conform to evidence.*—When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at my time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleading's to be amended and shall be so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

Under this provision amendment is not even necessary for the purpose of rendering judgment on issues proved though not alleged. Thus, commenting on the provision, Chief Justice Moran says in his Rules of Court:

> "Under this section, American courts have, under the New Federal Rules of Civil Procedure, ruled that where the facts shown entitled plaintiff to relief other than that asked for, no amendment to the complaint is necessary, especially where defendant has himself raised the point on which recovery is based, and that the appellate court treat the pleadings as amended to conform to the evidence, although the pleadings were not actually amended." (I Moran, Rules of Court, 1952 ed., 389-390.) Our conclusion therefore is that specification of error II, III, and IV are without merit.

Let us now pass on the errors V and VI. Admitting, through his attorney, at the early stage of the trial, that the land in dispute "is that described or represented in Exhibit A and in Exhibit B enclosed in red pencil with the name Quirino Bolanos," defendant later changed his

lawyer and also his theory and tried to prove that the land in dispute was not covered by plaintiff's certificate of title. The evidence, however, is against defendant, for it clearly establishes that plaintiff is the registered owner of lot No. 4-B-3-C, situate in barrio Tatalon, Quezon City, with an area of 5,297,429.3 square meters, more or less, covered by transfer certificate of title No. 37686 of the land records of Rizal province, and of lot No. 4rB-4, situated in the same barrio, having an area of 74,789 square meters, more or less, covered by transfer certificate of title No. 37677 of the land records of the same province, both lots having been originally registered on July 8, 1914 under original certificate of title No. 735. The identity of the lots was established by the testimony of Antonio Manahan and Magno Faustino, witnesses for plaintiff, and the identity of the portion thereof claimed by defendant was established by the testimony of his own witness, Quirico Feria. The combined testimony of these three witnesses clearly shows that the portion claimed by defendant is made up of a part of lot 4-B-3-C and major on portion of lot 4-B-4, and is well within the area covered by the two transfer certificates of title already mentioned. This fact also appears admitted in defendant's answer to the third amended complaint.

As the land in dispute is covered by plaintiff's Torrens certificate of title and was registered in 1914, the decree of registration can no longer be impugned on the ground of fraud, error or lack of notice to defendant, as more than one year has already elapsed from the issuance and entry of the decree. Neither could the decree be collaterally attacked by any person claiming title to, or interest in, the land prior to the registration proceedings. (Sorongon vs. Makalintal,[1] 45 Off. Gaz., 3819.) Nor could title to that land in derogation of that of plaintiff, the registered owner, be acquired by prescription or adverse possession. (Section 46, Act No. 496.) Adverse, notorious and continuous possession under claim of ownership for the period fixed by law is ineffective against a Torrens title. (Valiente vs. Judge of CFI of Tarlac,[2] etc., 45 Off. Gaz., Supp. 9, p. 43.) And it is likewise settled that the right to secure possession under a decree of registration does not prescribe. (Francisco vs. Cruz, 43 Off. Gaz.,

5105, 5109-5110.) A recent decision of this Court on this point is that rendered in the case of Jose Alcantara et al., vs. Mariano et al., 92 Phil., 796. This disposes of the alleged errors V and VI.

As to error VII, it is claimed that 'there was no evidence to sustain the finding that defendant should be sentenced to pay plaintiff P132.62 monthly from January, 1940, until he vacates the premises." But it appears from the record that the reasonable compensation for the use and occupation of the premises, as stipulated at the hearing was P10 a month for each hectare and that the area occupied by defendant was 13.2619 hectares. The total rent to be paid for the area occupied should therefore be P132.62 a month. It also appears from the testimony of J. A. Araneta and witness Emigdio Tanjuatco that as early as 1939 an action of ejectment had already been filed against defendant. And it cannot be supposed that defendant has been paying rents, for he has been asserting all along that the premises in question "have always been since time immemorial in open, continuous, exclusive and public and notorious possession and under claim of ownership adverse to the entire world by defendant and his predecessors in interest." This assignment of error is thus clearly without merit.

Error No. VIII is but a consequence of the other errors alleged and needs for further consideration.

During the pendency of this case in this Court appellant, thru other counsel, has filed a motion to dismiss alleging that there is pending before the Court of First Instance of Rizal another action between the same parties and for the same cause and seeking to sustain that allegation with a copy of the complaint filed in said action. But an examination of that complaint reveals that appellant's allegation is not correct, for the pretended identity of parties and cause of action in the two suits does not appear. That other case is one for recovery of ownership, while the present one is for recovery of possession. And while appellant claims that he is also involved in that other action because it is a class suit, the complaint does not show that such is really the case. On the contrary, it appears that the action seeks relief for each individual plaintiff and not relief for and on behalf

of others. The motion for dismissal is clearly without merit.

Wherefore, the judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, Labrador, and *Concepcion, JJ.*, concur.

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[1] 80 Phil., 259.

[2] 80 Phil., 415.

Date created: October 08, 2014