

PEDRO D. PAMINTUAN, PETITIONER, VS. HON. COURT OF APPEALS, (THIRD DIVISION), RESPONDENT.*G.R. No. L-19670. June 21, 1965*

Ponente: CONCEPCION, J.

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Appeal by certiorari from a decision of the Court of Appeals.

On May 12, 1959, Jose Valeriano commenced in the Municipal Court of Manila Civil Case No. 67399 thereof, against Pedro D. Pamintuan, to eject him from a property of Valeriano. In due course, said court rendered judgment on August 3, 1959 sentencing Pamintuan to vacate said property and to pay a sum of money for its use, plus attorney's fees and costs. On September 16, 1960, the Sheriff of Manila ejected Pamintuan from the property and turned it over to Valeriano. Soon later, however, Pamintuan reoccupied the property, allegedly by force. After appropriate proceedings, Pamintuan was, accordingly, adjudged guilty of contempt of court, and sentenced accordingly. Subsequently, on motion of Valeriano, the Municipal Judge ordered the issuance of an alias writ of execution directing the sheriff to eject Pamintuan once more and to collect from him the amount of the money judgment. Before this writ could be executed, Pamintuan instituted Civil Case No. 44410 of the Court of First Instance of Manila, against Valeriano, as well as the Municipal Judge and the Sheriff.

In Pamintuan's complaint, he prayed that judgment be rendered

"1. Immediately enjoining the defendant from proceeding with the said order of the Municipal Court ordering the herein plaintiff to vacate within four (4) days from October 1, 1960 the premises in question;

"2. After trial making the injunction above-mentioned permanent and ordering the defendant not to eject the herein plaintiff without first filing a suit for ejectment based on the new contract created into between the herein plaintiff and the herein defendant; and

"3. Plaintiff further prays for any other relief that may be found just and equitable under the premises."

upon the ground that Pamintuan had paid a sum of money to Valeriano; that the balance of the money judgment in his favor was covered by several pieces of jewelry delivered by Pamintuan to Valeriano; and that Pamintuan had retaken possession of the aforementioned property in pursuance of a contract with Valeriano, who had agreed, not only to relet the property, but also, to sell it to Pamintuan. Sometime after the filing of said complaint and of the answer thereto, the lower court issued, after due hearing, the writ of preliminary injunction prayed for by Pamintuan.

In due course, subsequently, or on April 17, 1961, the court, then presided over by Hon. Juan P. Enriquez, Judge, rendered judgment dismissing Pamintuan's complaint and sentencing him to pay P500 to Valeriano as attorney's fees and costs, and dissolving the writ of preliminary injunction aforementioned, as well as sentencing Pamintuan and his surety to pay Valeriano P500, as damages for the issuance of said writ. Copy of this decision was served upon Pamintuan on April 22, 1961. Thirty (30) days later, or on May 22, 1961, Pamintuan filed his notice of

appeal, record on appeal, and appeal bond, but the lower court, then presided by another Judge, respondent, Hon. Manuel P. Barcelona, disapproved the record on appeal, upon the ground that the decision sought to be appealed from had become final and executory fifteen (15) days after notice of said decision, the case being one of certiorari, not injunction, as contended by Pamintuan and declared by Judge Enriquez.

Judge Barcelona having refused to reconsider its aforementioned view, Pamintuan thereupon filed with the Court of Appeals a petition—docketed as CA-G.R. No. 30156 B — for a writ of certiorari and mandamus against Judge Barcelona, as well as the Sheriff of Manila and Valeriano, to compel approval of the aforementioned record on appeal, upon the ground that Civil Case No. 44410 is an injunction case, not one for certiorari, and that Pamintuan had, accordingly, thirty (30) days from notice, within which to appeal from the decision therein rendered. However, on December 29, 1961, the Court of Appeals rendered a decision sustaining the view of Judge Barcelona and, consequently, dismissing Pamintuan's petition for certiorari and mandamus. A reconsideration of this decision of the Court of Appeals having been denied, Pamintuan now seeks a review thereof by certiorari.

The only question we are called upon to resolve is the nature of the cause of action set forth in Pamintuan's complaint in said case No. 44410. Respondent Judge and the Court of Appeals held that it was one for certiorari because Pamintuan impugned therein the jurisdiction of the municipal court to issue the aforementioned alias writ of execution. It is well settled, however, that the nature of an action is determined by the allegations of the pleadings therein. Pamintuan's complaint in case No. 44410 contained, however, no allegation, either express or implied, assailing the jurisdiction of the municipal court to issue said alias writ of execution. There are in the complaint none of the allegations required in petitions for certiorari, namely, an act performed without jurisdiction or in excess of jurisdiction or with grave abuse of discretion, amounting to want of jurisdiction, and absence of a plain, speedy and adequate remedy in the ordinary course of law (Rule 65, Section 1, Rules of Court).

Pamintuan merely relied, in his complaint, upon a contract he allegedly had with Valeriano, after the rendition of the decision of the municipal court and the partial execution thereof, whereby Valeriano had agreed to re-lot and to sell the property in question to Pamintuan. What is more, he made in his complaint the allegations peculiar to petitions for injunction, such as, for instance, that the alias writ of execution "would not only cause great and irreparable injury, but will, also, work injustice" to him (see Rule 58, Sections 3 and 5, Rules of Court). In fact, the complaint stated that it was "for injunction" and the decision of Judge Enriquez so characterized it. In other words, the cause of action set forth in Pamintuan's complaint was actually one for injunction, and so was the prayer in said pleading, regardless of whether or not the relief he should have applied for was certiorari, so that he had thirty (30) days from notice to appeal from said decision.

The least that can be said, from a strictly technical viewpoint, is that the complaint could be considered as one either of injunction or of certiorari. Since, from the filing of said pleading up to the rendition of the decision on the merits, the parties and the court had considered the case as one of injunction, and the Rules of Court shall be "liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding" (Rule 1, Section 2, Rules of Court), the spirit of the Rules and the interest of justice and fair play would be served by allowing Pamintuan to perfect his appeal within the period Prescribed for injunction cases (Alonzo vs. Villamor, 16 Phil. 315; Case vs. Jugo, 77 Phil. 517; International Tobacco Co. vs. Yatco, 55 Off. Gaz. 811).

WHEREFORE, the decision of the Court of Appeals is hereby reversed and respondent Judge is, accordingly, directed to approve the record on appeal filed by petitioner herein in said Civil Case No. 44410 of the Court of First Instance Manila and to certify it to the appellate court, with costs against herein respondent Jose Valeriano. It is so ordered.

Bengzon, C.J., Reyes, J.B.L., Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.
Decision reversed.

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