

**FRANCISCA GATCHALIAN, PLAINTIFF AND APPELLEE, VS.
GORGONIO PAVILIN, JOSE DE VERA, EUGENIO DE VERA, JOSE
ORTIZ, ALFONSO ORTIZ, AND CONRADO CABUYADAO, DEFENDANTS
AND APPELLANTS.**

G. R. No. L-17619. October 31, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal on points of law from a summary judgment rendered on 1 December 1959 by the Court of First Instance of Isabela, Branch II (Judge Pedro C. Quinto presiding), in its case No. 385, declaring plaintiff-appellee Francisca Gatchalian owner of the disputed property and ordering defendants-appellants to vacate the same; as well as from the supplementary decision of 23 August 1960 awarding damages against the defendants and in favor of plaintiff.

In substance, the complaint, which was filed on 9 August 1958, alleged that plaintiff-appellee Gatchalian is the owner of a tract of land consisting of three lots with a total area of about 143 hectares as evidenced by one Original Certificate of Title No. P-31 (Sales Patent No. V-33) of the Register of Deeds of the Province of Isabela; that Lot No. 2 thereof consists of about 88 hectares, portions of which were "by means of force, strategy and/or stealth, unlawfully entered" by herein defendants-appellants during the planting season of 1953, "ejecting the plaintiff and/or her representative or representatives, thereby illegally depriving said plaintiff of the possession of said portions" which have an aggregate area of 36 hectares; and that the extent or area in Lot No. 2 respectively entered by the defendants are, more or less, as follows:

Gorgonio Pavilin	
3 hectares	
Jose de Vera and Engenio de Vera	
12 hectares	
Jose Ortiz	
8 hectares	
Alfonso Ortiz	
8 hectares	
Conrado Cabuyadao	
___5 hectares	
Total	

36 hectares

and prayed for recovery and damages.

In their joint answer, appellants not only denied all the material facts and allegations of the complaint but also made "Affirmative and Alternative Defenses" with "Counterclaim", with special emphasis on the fact that said Certificate of Title No. P-31 is null and void ab initio, the same being a forest land at the time it was allegedly bought in 1947 by plaintiff-appellee. Further more, appellants claim in their answer that "the alleged landholding and title of the plaintiff could not have covered defendant's landholding" (paragraph 2, Affirmative and Alternative Defenses); that their predecessors-in-interest, in good faith, took possession, made clearings, cultivations, and improvements thereon for several years long before 1953, openly, continuously, exclusively, publicly and peacefully, on concept of owners thereof, with intention of acquiring later on their respective land titles over the same from the Bureau of Lands, in the manner provided by law, as soon as it is released by the Bureau of Forestry. In attempting to perfect their claim over their landholdings, appellants claim in their answer and submitted affidavits that they had filed and paid for their homestead entry applications, entered and numbered as H. A. Nos. V-68296; V-68301; V-68382; and V-68298 (Exhibits S and 4, pp. 57-68 and 63-65, Record on Appeal), after the said land was actually released by the Bureau of Forestry to the Bureau of Lands on 17 May 1954, several years before plaintiff's patent was issued by that Bureau.

Upon motion of the plaintiff, and overruling the objections of the defendants, the court below declared that there was no genuine issue of fact in so far as the title to the property was concerned, and granted summary judgment in her favor, ordering defendants to vacate the lands. In a supplementary decision, plaintiff was awarded damages to be paid by defendants.

Their motions for reconsideration having been rejected, defendants appealed to this Court.

The theory of plaintiff-appellee, accepted by the Court a quo, is that the defendants-appellants' pleadings raised no genuine issue of fact. We find this contention unwarranted.

Our examination of the pleadings and affidavits submitted for the defendants reveals that while inartistically drawn, they interpose two main defenses: (1) that their landholdings lay outside the title of the plaintiff; and (2) that if her title did cover their landholdings, the title was acquired illegally, because at the time the plaintiff's sales patent was issued, the land covered was still part of a forest reserve. While such defenses are to a certain extent incompatible inter se, it can not be said that they raise no genuine issue of fact. It must be remembered that section 9 of Rule 15 specifically authorizes the pleading of alternative or hypothetical de-defenses, and the decisions of this Court hold that such defenses may be inconsistent with each other provided each is consistent in itself (*Castle Bros. vs. Go Juno*, 7 Phil. 144; *Heirs of Marquez vs. Valencia*, 99 Phil., 740; 52 Off. Gaz., 63.76; *I Moran*, Comments on the Rules of Court, 1957 Ed., pp. 234-235).

In view of the circumstances, the following notes that former Chief Justice Moran (of. cit.) has made on the rendition of summary judgments under the Federal Rules are apposite and fully applicable to the case now before us:

"A summary judgment should not be granted unless the facts are clear and undisputed, and if there is a controversy upon any question of fact, there should be a trial of the action upon its merits. (*Kissick Construction Co. vs. First National Bank of Wahoo, Nebraska*, 6 Fed. Rules Service, 56c. 41, Dec. 3, 1940)." (*Moran's Comments on the Rules of Court*, Vol. 1, p. 600. 2nd Ed.)

"Authority of Court to enter summary judgment.—Rule 56 (in this jurisdiction Rule 36, sec. 3) does not vest in the court jurisdiction summarily to try the issues on depositions and affidavits, but gives the court limited authority to enter summary judgment only if it clearly appears that there is no genuine issue of material fact.

Upon a motion for summary judgment the Court's sole function is to determine, whether there is an issue of fact to be tried, and all doubts as to the existence of an issue of fact must be resolved against the moving party. On a motion for summary judgment, the court is not authorized to decide an issue of fact, but is to determine whether the pleadings and record before the court create an issue of fact to be tried. In other words, the rule (Rule 36, sec. 3) does not invest the court with jurisdiction summarily to try the factual issues on affidavits, but authorizes summary judgment only if it clearly appears that there is no genuine issue as to any material fact." (Moran, supra, p. 603)

"Movant has burden of showing absence of genuine issue.—A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, and any doubt as to the existence of such an issue is resolved against the movant. The courts are quite critical of the papers presented by the moving party, but not of the opposing papers. Thus, in ruling on a motion for summary judgment the court should take that view of the evidence most favorable to the party against whom it is directed, giving that party the benefit of all favorable inferences. That one may surmise from plaintiff's showing that defendant is unlikely to prevail upon a trial is not a sufficient basis to assume that defendant's allegations are sham, frivolous or unsubstantial. If the defense relied upon by the defendant is legally sufficient and does not appear 'patently sham,' the motion for summary judgment should be denied." (Moran, supra, pp. 601-602)

The conflicting claims of the parties plainly require the exact delimitation of the area covered by the title of the plaintiff and those occupied by the defendants in order to find out if they overlap, To do so, a trial is indispensable.

As to the alleged lack of personality of defendants-appellants to assail appellee's land grant and certificate of title for the reason that said appellants are mere prospective homestead applicants, it is sufficient to remark that by reason of their prior occupancy and cultivation, these parties have already acquired possessory rights that they may vindicate and defend against intruders without better title. And if it be true that the Bureau of Lands had no jurisdiction to issue a patent in favor of appellee Francisca Gatchalian because the land involved was still inalienable forest land when granted, then it may be plausibly contended that her patent title would be ab initio void, subject to attack at any time by any party adversely affected (Civil Code, Art. 1409, 1421; Vano vs. Insular Gov't., 41 Phil. 161; Adorable vs. Dir. of Forestry, 107 Phil., 401). Be that as it may, the questions of law should be resolved after, and not before, the questions of fact are properly litigated, since the facts proved may well affect the legal provisions applicable.

Wherefore, we find that the court a quo erred in rendering the summary judgment complained of; hence, its decisions in its Civil Case No. 385 (II Branch), dated 15 December 1959 and 23 August 1960, are annulled and set aside. The records are ordered remanded to the court below for trial on the merits in conformity with the Rules and established practice, and for a new judgment as the facts, law, and justice may warrant. Costs against appellee Francisca Gatchalian.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredez, Dizon, Regala and Makalintal, JJ., concur.

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