

JOSE BARRAMEDA, DOLORES B. MAGADIA, AND JULIAN BARRAMEDA, JR., PLAINTIFFS AND APPELLEES, VS. PAULINO BARBARA AND MASCELA BARBARA, DEFENDANTS AND APPELLANTS.

G.R. No. L-4227. January 28, 1952

Ponente: JUGO, J.

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JUGO, J.:

The facts of this case as gathered from the decision of the Court of First Instance of Camarines Sur, may be summarized as follows:

In the case entitled Paulino Barbara and Marcela Barbara vs. Julian Barrameda, Civil Case No. R-119 of said court, Paulino and Marcela Barbara (defendants-appellants herein) filed a complaint against Julian Barrameda (deceased father of the herein plaintiffs-appellees), alleging that Barrameda refused to allow the redemption of the land in question herein, which according to them had been mortgaged to Barrameda for the sum of P270, the original mortgagor and mortgagee being Jacoba Buyot and Juan Reis, respectively. Juan Reis assigned his rights as mortgagee to Julian Barrameda. Jacoba Buyet was succeeded by her heirs Paulino and Marcela Barbara. Julian Barrameda filed an answer alleging that the transaction between him and Jacoba Buyet was not a mortgage but a sale with pacto de retro and that neither Jacoba Buyet nor her heirs had redeemed the land within the stipulated period of six years, and, consequently, he, Julian Barrameda, had become the absolute owner of the property in question.

After the above pleadings had been filed and while the case was pending hearing, the court, after being informed that Julian Barrameda had died, ordered the plaintiffs to amend their complaint so as to substitute the legal representatives of Julian Barrameda as defendants. Although seven months had elapsed since the plaintiffs were notified of said order, they had failed to comply with it.

On May 7, 1947, counsel for the deceased defendant Julian Barrameda filed a motion for dismissal on the ground that in failing to file an amended complaint, the plaintiffs in said case, R-119 (defendants-appellants herein), showed lack of interest in prosecuting the case. The court granted the motion, dismissing the case in its order dated May 13, 1947.

The plaintiffs herein, Jose and Julian Barrameda, Jr., and Dolores B. Magadia, heirs of Julian Barrameda, filed a complaint, dated August 26, 1947, in the present case, No. 843 of the Court of First Instance of Camarines Sur, against Paulino and Marcela Barbara (plaintiffs in case No. R-119), alleging the facts above stated, and praying that they be declared the owners of the property in question and that the defendants be ordered to indemnify them in the sum of P200 per annum as damages from May, 1947 until the defendants should vacate the land.

The defendants herein Paulino and Marcela Barbara filed an answer, alleging in substance, that the deed which the plaintiffs claim to be of sale with pacto de retro was only of mortgage, which was null and void because their

deceased mother Jacoba Buyet, who executed it, had no authority to do so, as the property belonged exclusively to their deceased father Pascual Barbara; that they had been in possession of the land as owners for more than twenty years. The answer of the defendants ends with the prayer that the document in question be declared null and void; that if it is declared valid, it be considered only as a mortgage or guaranty of one-half of the property in question; and that they be ordered to pay to the plaintiffs only half of the sum of P270 with costs against the plaintiffs.

The plaintiffs in the present case filed a motion entitled "Motion to Dismiss the Counterclaim of the Defendants and Render Judgment in accordance with the Allegations in the Complaint," based on the grounds:

- "1. That the cause of action stated in said counterclaim is barred by prior judgment.
2. That the said counterclaim states no cause of action.
3. That the answer does not allege any valid defense."

The trial court, without receiving evidence and rejecting the allegations of the answer on the ground that the prior dismissal under Rule 30, section 3, was a final adjudication on the merits, rendered judgment in the present case declaring the plaintiffs owners of the land in question and ordering the defendants in the present case to deliver the possession to the plaintiffs, and to pay the costs.

The defendants herein appealed to the Court of Appeals which, considering that all the questions raised are of law and not of fact, certified the present case to this Court, which accepted it.

The order of dismissal for failure to prosecute in the other case, No. R-119, was based on the failure of the plaintiffs to comply with the order of the court to amend the complaint so as to substitute as defendants the heirs or representatives of the deceased defendant Julian Barrameda.

Rule 3, section 16, reads as follows:

"Duty of attorney upon death or incapacity of a party.—Whenever a party to a pending case dies or becomes insane, it shall be the duty of his attorney to inform the court promptly of such death or insanity and to give the name and residence of the executor or administrator, guardian, or other legal representatives of the deceased or insane."

Section 17 of the same rule, reads as follows:

"Death of party.—After a party dies and the claims is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs."

It will be seen that it was the duty of the attorney for the deceased Julian Barrameda to inform the court of Barrameda's death and furnish it with the name and residence of the executor, administrator, guardian, or legal representative of the deceased. The attorney of the deceased or somebody else, who does not appear of record, may have informed the court of the death of Julian Barrameda, but said attorney did not furnish the name and residence of the executor, administrator, guardian, or legal representative of his deceased client, in accordance with section 16, Rule 3, above quoted. This rule must have taken into consideration the fact that the attorney for the deceased party is in a better position than the attorney of the other party to ascertain who are the legal

representatives or heirs of his deceased client. This duty should not be shifted to the plaintiff or his attorney. As a consequence of section 16, the court, under section 17, orders the legal representative of the deceased party, whose name must have been furnished before hand by his attorney, to appear and substitute the deceased within thirty days. It is only after the failure of the legal representative to comply with said order that the court, under section 17, will order the opposing party to procure the appointment of a legal representative within the time to be specified by the court, to appear in behalf of the interest of the deceased party. It should be understood that under section 17, the heirs of the deceased may appear instead of an executor or administrator, with a guardian ad litem for the minor heirs. In the present case, although the attorney for the deceased Barrameda did not furnish the name of the legal representative of his deceased client, the court directly ordered the plaintiffs to make the substitution without previously requiring the defendants to do so. Consequently, the order of the court requiring the plaintiffs to make the substitution without previously ordering the attorney for the defendants to name the legal representative and ordering the latter to appear, was a violation of Rule 3, sections 16 and 17, and was, therefore, void. The non-compliance with that order could not be considered as failure to prosecute. The fault of the defendants should not be attributed to the plaintiffs, making the latter suffer the serious consequences that are claimed to have ensued.

It is stated in the appealed decision:

"... So on May 7, 1947, counsel for the defendant Julian Barrameda filed a motion for dismissal. . . ."

On May 7, 1947, Julian Barrameda was already dead. How could the attorney represent him in filing the motion? Julian Barrameda, being dead, had no longer any standing in court; he had no personality and could not have been represented by an attorney. But if it had been the heirs of the deceased Barrameda who were represented in filing the motion to dismiss (which was not so), then instead of filing a motion for dismissal they should have appeared as defendants in lieu of the deceased Julian Barrameda. If they had appeared in court to file a motion for dismissal, they could and should have appeared as defendants as it was their duty to do under sections 16 and 17 of Rule 3, without shifting this duty to the plaintiffs.

In view of the foregoing, the decision appealed from is set aside and the case is ordered returned to the trial court for further and appropriate proceedings, with costs against the appellees. It is so ordered.

Paras C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, and Bautista Angelo, JJ., concur.

CONCURRING

TUASON, J.:

I concur and my concurrence is based on the fact that the dismissal of the action in Civil Case No. R-119 did not bar the plaintiffs, in that case, from renewing that action or using the grounds of that action as a defense or cross-claim in a subsequent suit. Case No. R-119 when dismissed was not in a state to be decided on the merits and the court had no jurisdiction in that case beyond that of dismissing it, irrespective of whether the order to the plaintiffs to make a substitution of party defendant was or was not in accordance with the prescribed procedure.

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