

ENCARNACION H. AGUILOS, ASUNCION H. PASOLA, PACIENCIA P. HALLERA, CONSUELO H. RIEL, PAZ H. DE LA TORRE, PURIFICACION H. CATAJOY, GORGONIA P. HALLERA, JOVITA H. CUNETA, JUAN TIMO...

G.R. No. L-29312. October 19, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This petition, filed originally as a supplemental petition and/or second motion for reconsideration^[1] of the dismissal on 8 August 1968^[2] of the original petition for certiorari and mandamus with preliminary injunction, was admitted by the Court as an amended petition.^[3] It seeks to have this Court declare as null and void the judgment and orders of the Court of Agrarian Relations at Ormoc City, in a suit filed by herein respondent Remigio Capaycapay for his reinstatement as tenant and for recovery of damages.^[4]

Respondent Capaycapay originally sued against Encarnacion H. Aguilos, alleging that he was the tenant since 1927 of the four-hectare landholding owned by one Celestino Hallera who after his death was succeeded by his daughter, defendant Encarnacion H. Aguilos, and that Encarnacion ejected him as such tenant and replaced him with her co-defendants Juan Timon and Alex Timon. He named these three (3) as defendants in the suit. An answer was submitted in behalf of the defendants by Atty. Remigio Lauron, which did not dispute his status as tenant but claimed that plaintiff voluntarily abandoned the landholding to which he sought reinstatement and in counterclaim sought on behalf of Encarnacion the payment of damages resulting from his alleged abandonment of the landholding.

During the pre-trial of the case, the parties entered into a partial stipulation of facts wherein they recognized that defendant (Encarnacion) H. Aguilos was not the sole owner of the landholding in question, because she had other sisters with whom she had inherited the property in question from their father Celestino Hallera; and it was stipulated that --

"to expedite the disposition of this case, plaintiff shall file an amended complaint naming said co-owners as new defendants and upon service of said amended complaint, the present counsel for defendant Encarnacion H. Aguilos shall file an amended answer in representation of said new defendants."^[5]

Pursuant to the stipulation, the plaintiff below filed an amended complaint inpleading as additional defendants the sisters of Encarnacion H. Aguilos, named Asuncion H. Pasola, Paciencia P. Hallera, Consuelo H. Riel, Paz H. de la Torre, Purificacion H. Catajoy, Gorgonia P. Hallera and Jovita H. Cuneta. The amended complaint was served upon Atty. Lauron, who then filed an amended answer in representation of all the original and all the new defendants, but the latter were not served with summons.

The case was set for hearing on 30 March 1967, at which defendants and counsel Lauron failed to appear, although notice thereof was sent to said attorney by registered mail on 7 March 1967. For such failure, plaintiff's

counsel moved to have the defendants declared in default. After verifying that the first notice of the registered mail containing the amended complaint was sent on 20 March 1967 to Atty. Lauron (who claimed afterwards not to have received it and that the notices were delivered to his neighbor who misplaced them), the agrarian court heard the case ex parte. On 25 July 1967, it rendered decision holding that the new defendants, although they were co-owners of the land, had nothing to do with the ejectment of plaintiff Capaycapay nor with his having been deprived of tenancy rights, which were solely attributable to original defendant Encarnacion H. Aguilos. The agrarian court so held in consonance with the view that Encarnacion was in effect the transferee of the landholding and thus succeeded to the duties of the deceased landholder, her father Celestino Hallera, including the obligation to respect the tenure and rights of the tenant.[6] It therefore rendered judgment:

"1.

Ordering the defendant-landholder Encarnacion Hallera alias Encarnacion H. Aguilos to reinstate plaintiff-tenant Remigio Capaycapay to his landholding in question located at Pinamopo-an, Capoocan, Leyte and to maintain him in the peaceful possession and cultivation thereof;

"2.

ordering the ejectment of the present tenants Juan Timon and Alex Timon;

"3.

ordering further defendant Encarnacion Hallera alias Encarnacion H. Aguilos to pay the plaintiff the sum of ONE THOUSAND THREE HUNDRED TWENTY PESOS (P1,320.00) every calendar year from 27 February 1965 until finally reinstated;

"4.

ordering defendant Encarnacion Hallera, alias Encarnacion H. Aguilos, to pay the plaintiff the sum of FIVE HUNDRED SEVENTEEN PESOS (P517.00) which is the value of the coconut trees planted by the plaintiff in the landholding in question;

"5.

ordering defendant Encarnacion Hallera alias Encarnacion H. Aguilos to pay plaintiff the sum of THREE HUNDRED PESOS (P300.00), as moral damages and THREE HUNDRED PESOS (P300.00), attorney's fees;

"6.

ordering the defendant Encarnacion Hallera alias Encarnacion H. Aguilos to pay the costs of this action.

"SO ORDERED."

Atty. Lauron, for the defendants, moved for new trial; then new lawyers, Attys. Gerardo O. Tamaca and Briccio T. Aguilos, Jr., appeared for the defendants and filed a supplemental pleading. The court denied the motion for new trial. The new lawyers' motion to reconsider was likewise denied. At no instance did the new lawyers

question the non-service of summons on the new defendants. (Annexes F and I, petition).

On 20 June 1968, the plaintiff moved for the execution of the decision, which was granted on 21 June 1968, and the sheriff made a return of service of the writ on 20 August 1968. It appears, however, that previously, on 2 August 1968, all the defendants, original and new, through lawyers Tamaca and Aguilos, had filed in this Supreme Court a petition for certiorari and mandamus with preliminary injunction. The petition was dismissed on 8 August 1968 and a motion for reconsideration was denied on 29 August 1968.[7] On 2 October 1968, the petitioners, excluding Encarnacion H. Aguilos, Juan Timon and Alex Timon, through their own lawyers, Salonga, Ordoñez, Yap, Sicat & Associates, filed a supplemental petition and/or second motion for reconsideration. This pleading was the one considered by this Court as a petition for certiorari and mandamus.

The petitioners at bar are those referred to in the lower court as new defendants; the petition expressly excludes the original defendants Encarnacion H. Aguilos, Juan Timon and Alex Timon. Said petitioners stress that they were deprived of their day in court when they were sued as additional defendants in the amended complaint, without their having been served with summons, contrary to the prescription of Section 1, Rule 14, of the Rules of Court[8]; that they never authorized Atty. Lauron to represent them,[9] for which reason the court a quo never acquired jurisdiction over the petitioners' persons, hence they aver that the judgment and orders of the court are null and void.

While normally the claim of petitioners that as additional defendants they were entitled to be served with summons for the lower court to acquire jurisdiction over their persons would be correct, yet this would not hold true where as in this case petitioners waived the requirement of summons and voluntarily submitted to the lower court's jurisdiction through the appearance of two counsels on their behalf (Rule 14, section 23). The first of such counsels was Atty. Lauron who filed the answer on their behalf and after the rendition of judgment, a motion for new trial on the ground of his failure to receive notice of trial through excusable neglect. Atty. Lauron's belated disclaimer only in this Court of authority to appear for petitioners was never put forward by him in his motion for new trial in the proceedings below and cannot be given any credence, not to mention that it cannot be raised for the first time in this special civil action, improperly brought in substitution of the appeal which they failed to avail of and lost.[10]

The second of petitioners' counsels were new lawyers Attys. Tamaca and Aguilos, Jr. who filed a supplemental pleading on behalf of petitioners in support of Atty. Lauron's motion for new trial as well as a motion to reconsider the denial of said motion for new trial - again recognizing that petitioners had duly submitted their persons to the lower court's jurisdiction. (There has not been any disclaimer of the authority of these new lawyers to appear for and represent all defendants [particularly, herein petitioners] in the proceedings belows.)

In fact, as stated above, said new lawyers Tamaca and Aguilos filed in this Court the original petition on behalf of all the defendants (original and additional) which was dismissed on 8 August 1968 and on 2 October 1968 (denying reconsideration of dismissal), and did not question either the non-service of summons on the additional defendants. Their petition simply reiterated their contention below that all the defendants should not have been declared in default and instead should be afforded an opportunity to cross-examine plaintiff's witnesses and to present their evidence, which the lower court had rejected in its resolution of 9 February, 1968, stressing that "between June 20, 1967 (when defendants were furnished copy of the default order) and July 25, 1967 when the decision of this case was rendered an intervening period of more than a month elapsed, yet the defendants within this long period of time never bothered to file any pleading to set aside such order of default. The defendants' silence within this period of time is evident that they deliberately slept on their rights and such could not now be entertained as a ground to set aside the order of default and the judgment on procedural standpoint." [11]

It will be seen, moreover, that except for the order to reinstate Capaycapay as tenant the judgment rendered by the court does not affect these petitioners, as shown by the dispositive portion thereof, hereinabove quoted; only the original defendants Encarnacion Aguilos, Juan Timon and Alex Timon had their corresponding liabilities adjudged, and these parties are not complaining, although the Timons were ordered ejected, and Encarnacion Aguilos alone was ordered to pay damages to plaintiff (now private respondent) Capaycapay. In fact, they did not appeal and the judgment against them had become final.

But petitioners aver that they are prejudiced by the decision, because the reinstatement of respondent Capaycapay to the land of which they are co-owners will deprive them of their inherent right to choose the suitable person to tend the premises. In this regard, petitioners' claim is in vain, in view of the Court's finding now that they had duly submitted through counsel to the agrarian court's jurisdiction and its judgment for respondent's reinstatement has long become final and executory. Even viewing the question in the most favorable light, the judgment for respondent's reinstatement should stand, for it is quite clear from the record that Encarnacion was the administrator-manager of the landholding inherited by her and her sisters-co-owners from their deceased father, Celestino Hallera. It was she who alone as such administrator-manager ejected respondent from the landholding and the lower court's judgment, setting aside respondent's ejectment and ordering his reinstatement by virtue of his tenancy (entered into since 1927 with petitioner's father) being entitled to security from removal except for cause, is binding upon all the co-owners and co-heirs.

The petitioners also argue that the order to reinstate Capaycapay is contrary to the pre-trial stipulation that the latter was no longer interested in his reinstatement. We find this position untenable, since the lower court accepted respondent's explanation when he took the witness stand that the disclaimer of interest in his reinstatement had been caused by threats of defendant Encarnacion H. Aguilos.[12]

The petitioners herein further claim prejudice in that the lower court allegedly authorized Encarnacion H. Aguilos to seek reimbursement from them for the sums adjudged against her. The claim is incorrect. The actual statement of the court reads as follows:

"The actuations of the defendant Encarnacion Hallera in the case at bar as may be gathered from her own pleadings indicate that she is the transferee landholder of the landholding in question. She is, therefore, solely liable for the obligations incurred by her deceased father. In making this conclusion we do not make a finding that she may or may not have a right to ask reimbursement from her co-heirs."[13]

Any right to reimbursement from petitioners on the part of Encarnacion by virtue of the money judgment against her alone may be the subject of an entirely separate action between them, where petitioners may present such defenses as may be available to them, or if their deceased father's estate has not yet been settled, such claim for reimbursement may be presented against the estate, again subject to any proper defenses.

ACCORDINGLY, the petition for certiorari and mandamus is dismissed. No costs.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] Rollo, pages 81-90.

[2] Rollo, page 61.

[3] Resolution, 12 November 1968, Rollo, page 117.

[4] Docketed as CAR Case No. 1015 Leyte-1966.

[5] Order, 28 October 1966, Appendix "A" of original petition, Rollo, p. 11.

[6] See *Joya vs. Pareja*, L 13258, Nov. 28, 1959; *Davao Steel Corp. vs. Cabatuando*, L 19866, Apr. 29, 1964.

[7] Rollo, page 78.

[8] "Section 1. Clerk to issue summons. - Upon filing of the complaint, the clerk of court shall forthwith issue the corresponding summons to the defendants."

[9] In his comment, Atty. Lauron claims to have appeared for the additional defendants by relying on the lower court's pre-trial order allegedly authorizing him to represent them (paragraph 4), at the same time claiming that he "honestly thought" that Encarnacion H. Aguilos would inform her sisters of their joinder in the (paragraph 6) but that she failed to inform them. (Comment, rollo, pages 114-116).

[10] See *Vallanca vs. Ariola*, L 29226, September 28, 1973.

[11] Rollo, page 54; note in parentheses supplied.

[12] CAR Decision, Annex "C" of the Petition.

[13] Rollo, page 12, emphasis supplied.

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