

RAMON A. TARNATE, PETITIONER AND APPELLANT, VS. LUCILO U. GARCIA AND THE HON. VICTORIANO H. ENDAYA AS PRESIDING JUDGE OF THE MUNICIPAL COURT OF BATANGAS, RESPONDENTS AND APPELLEES.

G.R. No. L-26266. December 29, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from an order of the Court of First Instance of Batangas denying a petition to restrain the Municipal Court of Batangas, Batangas, from proceeding with its Civil Case No. 1091 on the ground of pendency of another action between the same parties for the same cause.

On 17 August 1964 herein respondent Lucilo U. Garcia filed a complaint for forcible entry against herein petitioner Ramon A. Tarnate in the Municipal Court of Batangas, Batangas, which complaint was docketed as Civil Case No. 1083, alleging inter alia that:

"2. - On August 2, 1964 plaintiff was and, for some time prior thereto, had been in possession of a strip of land situated in the Municipality of Batangas, Province of Batangas and known as the old or abandoned bed of the Calumpang River, said strip of land being graphically indicated on a sketch with two parallel lines in blue ink. Copy of the sketch is hereto attached and made integral part hereof as Annex 'A';

"3. - On August 2, 1964 the defendant, without the knowledge and consent of the plaintiff; unlawfully, surreptitiously and forcibly, and with the use of armed men, entered upon and took possession of aforementioned land and placed barbed wire fence along the western side thereof, said barbed wire fence being indicated graphically with broken lines in red ink between points 'X' and 'Y' on the sketch marked Annex 'A' thereby illegally depriving plaintiff of possession of said land and preventing him from hauling therefrom truckloads of sand, so that, unless restrained by the Court, the defendant will continue to commit further acts of dispossession and unwarranted intrusion into the land in question, to the damage and prejudice of the plaintiff;"

On 10 September 1964 respondent Garcia filed another complaint for forcible entry against the same defendant in the same court, which was docketed as Civil Case No. 1091, alleging inter alia:

"2. That on August 2, 1964 plaintiff was and, for some time prior thereto, had been in lawful and peaceful possession of strips of land in the Municipality of Batangas, Province of Batangas and known as the old or abandoned bed of the Calumpang River, said strips of land being graphically indicated on a sketch with two parallel lines in blue ink, which is situated east of Lots 57, 59, and 60 of the Batangas cadastre. Copy of the sketch is hereto attached and made integral part hereof as Annex 'A';

"3. That plaintiff's possession over a portion of said strips of land more specifically that portion situated east of Lot 57 is in consequence of his ownership thereof and as regards those portions east of Lots 59 and 60, supra, as LESSEE thereof;

"4. That on August 2, 1964 the defendant, by means of force, strategy and stealth and with the use of armed

men, unlawfully, surreptitiously and forcibly, entered upon and took possession of the aforementioned strips of land, placed thereon a barbed wire fence, the same being indicated graphically with broken lines in red ink between points of 'X' and 'Y' on the sketch marked Annex 'A', thereby unlawfully and illegally deprived plaintiff of the possession of said strips of land prevented him from hauling therefrom truckloads of sand and since that date defendant has remained in illegal possession of the said premises and, up to the present, still retain such unlawful possession thereof, to the damage and prejudice of plaintiff."

On 28 October 1964 Tarnate moved to dismiss the second case (No. 1091) on the ground of pendency of another action between the same parties for the same cause. Garcia opposed the motion.

On 23 December 1964 the municipal court denied the motion to dismiss because it did not find the ground for dismissal to be indubitable.

Having failed to secure a reconsideration, petitioner Tarnate filed a petition for prohibition and mandamus against the municipal court of Batangas and Lucilo U. Garcia in the Court of First Instance of Batangas (Special Civil Case No. 1033), praying that the order of denial by the municipal court be annulled and that the said court be commanded not to give due course to, but to order the dismissal of, Civil Case No. 1091.

After trial, where evidence was introduced and stipulations of facts were made by the parties, the Court of First Instance of Batangas rendered judgment on 12 January 1966 denying the writ prayed for.

The present case before Us is a direct appeal from the aforesaid judgment of the Court of First Instance of Batangas. The said court gave due course to the appeal and ordered the transmittal of the original records on 26 April 1966, or before the effectivity of Republic Act 5440.

The issue here is whether or not the municipal court abused its discretion in denying the motion to dismiss the second complaint because the ground therefor, namely, pendency of another action between the same parties for the same cause, was not indubitable. The court of first instance held that there was no abuse of discretion and that if the municipal court committed an error it was an error of judgment, which was not correctible by certiorari or prohibition.

Why two separate complaints instead of only one were filed by herein private respondent is explained by him in his opposition to the petitioner's motion to dismiss in the municipal court, thus:

"We wish to state that before plaintiff instituted the first action, he made a cursory inspection of the fence illegally introduced by defendant on the premises in dispute. Believing that the said fence covers only Lot 58, Batangas Cadastre, of which he is the administrator of his son Adrian Garcia, he instituted CIVIL CASE NO. 1083 against the defendant * * *.

"However, a couple of weeks after the institution of the first case or specifically on September 1, 1964, plaintiff engaged the services of a Private Land Surveyor to undertake a relocation survey of Lots 57, 58, 59 and 60, Batangas Cadastre, in order to determine the correct boundaries of said lots in relation to the fence illegally constructed by defendant RAMON A. TARNATE on the abandoned river bed in question. The result of the re-location survey was that shown in the approved re-location plan showing that the said fence not only intruded upon Lot 58, Batangas Cadastre, which is the subject matter of the first case, but also encroaches upon Lots 57, 59 and 60, Batangas Cadastre, which are the subject matter of the case at bar." (Italics supplied)

In the court of first instance the parties stipulated in the course of the court that Civil Case No. 1083 referred to "that portion of the old bed of the Calumpang River east of Lot 58" and that Civil Case No. 1091 referred to the bed of the "old course of the Calumpang River east of Lot 57, 59 and 60."

While from the strictly technical viewpoint there was a splitting of the cause of action in pursuing the same

remedy in two separate complaints notwithstanding the fact that the alleged forcible entry constituted one and the same act, still a realistic and practical approach dictated the action taken by the municipal court. It should be remembered that the first complaint was commenced on 17 August 1964 and had not yet been tried when the second was filed about three weeks later. The two cases could be tried together as one, or the second complaint could be treated as an amendment of the first. Either way the entire controversy between the parties could be judicially settled, disregarding unessential procedural niceties, especially in the light of the reasonable explanation offered by the plaintiff below.

WHEREFORE, the order appealed from is hereby affirmed, with costs against the appellant.

Concepcion, C.J., Zaldivar, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Castro, J., took no part.

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