

NAPOLEON N. PIRAMIDE, PLAINTIFF-APPELLANT, VS.GO GUIOC SIAN AND BENJAMIN K. PIRAMIDE, DEFENDANTS-APPELLANTS.

G.R. No. L-29591. November 04, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

On April 19, 1968 Napoleon N. Piramide sued Go Guioc Sian and Benjamin K. Piramide in the Court of First Instance of Southern Leyte, Maasin Branch.

He alleged in his complaint that the late Narciso Piramide was survived by three legal heirs named Pedro Piramide, Pilar Piramide de Revill and Napoleon N. Piramide; that he, Napoleon, represented his father Fermin who predeceased Narciso, and that only the said three heirs took part in the partition of Narciso Piramide's estate.

The date of Narciso's death, the date of the partition, the properties partitioned, and the relationship of Pilar and Pedro to Narciso were not stated in the complaint. The trial court assumed that Pilar and Pedro were Narciso's children.

Napoleon N. Piramide prayed that he be declared the owner of two parcels of coconut land. One parcel is a nineteen-hectare land located at Sitio Buenavista, Burgos, Malitbog, Leyte. The other is an eight-hectare land located at Sitio Cantotang, Burgos, Malitbog.

Napoleon alleged that Pedro Piramide, Pilar Piramide-Revill and Go Guioc Sian, an alien and the widow of the deceased Chinaman Valentin Tan, executed a notarized contract dated March 25, 1947. In that contract, Pedro and Pilar acknowledged that Narciso was indebted to Valentin Tan in the sum of P7,746.90, that the payment thereof was guaranteed by the said two parcels of land, and that that credit was inherited by Go Guioc Sian from the estate of Valentin Tan.

In that same public instrument Pedro and Pilar conveyed the ownership and possession of the nineteen-hectare land to Go Guioc Sian, while the latter in turn conveyed to Pedro and Pilar the eight-hectare land on condition that the assessed value thereof in the sum of P1,440 would be paid in monthly installments of P100 by Pedro and Pilar to Go Guioc Sian.

Napoleon further alleged in his complaint that by means of another notarized contract dated June 3, 1948, signed by Pilar, Pedro, Go Guioc Sian and Benjamin K. Piramide, a grandson of land Narciso, the nineteen-hectare land became the exclusive property of Go Guioc Sian in contravention of the Constitution and, on the other hand, the eight-hectare land became Benjamin's absolute property. That contract ("Kaligunan sa Gikasabutan") is in Cebuano dialect. No translation thereof into English, Spanish or Pilipino language was attached to the complaint as required in section 34, Rule 132, Rules of Court.

Napoleon's theory is that the two contracts are void, that Pilar, Pedro and Benjamin were in pari delicto with Go

Guioc Sian, an alien, and that, therefore, they forfeited their interests in the two parcels of land and he, Napoleon, become the sole owner there-of. He asked that Go Guioc Sian and Benjamin be ordered to pay him the value of the copra which they had obtained from the said lands.

Defendants Go Guioc Sian and Benjamin K. Piramide filed a motion to dismiss the complaint on the grounds, inter alia, of prescription, lack of cause of action, and nonjoinder of Pedro Piramide and Pilar Piramide-Revill. Plaintiff Napoleon N. Piramide opposed the motion.

The lower court in its order of July 2, 1968 noted that the interest or participation of Napoleon in the said two parcels is not alleged in the complaint and that there is no indication therein as to the right of Napoleon which was allegedly violated by Benjamin and Go Guioc Sian. It concluded that the complaint does not sufficiently state a cause of action against the defendants. It ruled that Pedro Piramide and Pilar Piramide are indispensable or necessary parties who should be joined as defendants. It ordered the plaintiff to amend his complaint.

As Napoleon N. Piramide opted not to amend his complaint, the lower court dismissed it in its order of July 20, 1968. Napoleon appealed to this Court "on legal grounds" from the said orders.

He contends that the trial court erred in holding that his complaint does not state sufficient ultimate facts to constitute a cause of action and that Pedro Piramide and Pilar Piramide-Revill should be impleaded as defendants. He invokes the ruling that the court may not compel the plaintiff at his own expense to include as parties-defendants persons who, under the adverse party's theory, are to answer for the adverse party's liability (*Vaño vs. Alo*, 95 Phil. 495).

Plaintiff Napoleon N. Piramide avers on page 13 of his brief that, being one of the three legal heirs of Narciso Piramide, he "has one third right of ownership and possession over the said two parcels of land". He says that "he is one of the three co-owners of the two parcels of land" (p. 3, Reply Brief). These averments in his briefs are not found in his complaint.

He did not allege in his complaint that the two parcels of land formed part of the estate of Narciso Piramide. What he alleged was that Narciso's estate had already been partitioned. Napoleon did not specify categorically his share in the two parcels of land. His cause of action against Go Guioc Sian and his cousin, Benjamin K. Piramide, is nebulous or uncertain. The deficiencies in his complaint are evident on the face thereof.

In his complaint, briefs and opposition to the motion to dismiss, he harped on Go Guioc Sian's disqualification to acquire the nineteen-hectare land without asseverating with certitude the basis of his action to impugn the transfer of the land to Go Guioc Sian (See art. 1421, Civil Code).

As to the joinder of Pedro Piramide and Pilar Piramide-Revill, it should be borne in mind that Napoleon N. Piramide wants the trial court to declare void the aforementioned two contracts wherein Pilar and Pedro (the coheirs of Napoleon) are signatories. They should perforce be heard before such a declaration of nullity is made. Complete relief cannot be granted without giving them their day in court. Hence, their joinder is imperative.

If Napoleon N. Piramide has really a cause of action for the nullification of the said contracts, he should sue all the parties thereto and not limit his complaint to two of the four contracting parties.

The trial court did not err in requiring Napoleon N. Piramide to cure the patent deficiencies of his complaint by impleading as defendants Pilar Piramide-Revill and Pedro Piramide and by incorporating additional allegations that would disclose his interest in the two parcels of land, justify his action to invalidate the two contracts, and sustain his claim that he has become the owner of the two parcels of land.

Inasmuch as Napoleon N. Piramide did not comply with the order for the amendment of his complaint, the trial court acted within its prerogative in dismissing the complaint (*Garchitorena vs. De los Santos*, 115 Phil. 490). However, to avoid injustice, the dismissal should not operate as an adjudication on the merits (Sec. 3, Rule 17, Rules of Court).

WHEREFORE , the trial court's order of dismissal is affirmed with the clarification that it is a dismissal without prejudice. Costs against plaintiff-appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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