

**GENERAL INSURANCE AND SURETY CORPORATION, PETITIONER,
VS. THE HON. HONORATO B. MASAKAYAN, JUDGE OF THE COURT OF
FIRST INSTANCE OF RIZAL, BRANCH V, QUEZON CITY; LEANDRO E.
CASTEL...**

G.R. No. L-28764. November 29, 1973

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petition for certiorari, prohibition and mandamus, with prayer for a writ of preliminary injunction to review the order dated June 7, 1967 of the Court of First Instance (CFI) of Rizal, Branch V (Quezon City), denying petitioner's motion to file an amended answer with counterclaim together with the order dated November 21, 1967, also denying petitioner's motion for reconsideration thereof, both issued in its Civil Case No. Q-4795 entitled, "Leandro E. Castelo, et al., Plaintiffs vs. General Insurance and Surety Corporation, Defendant."

This case stemmed from the filing by petitioner on October 22, 1959, of a complaint for unlawful detainer against private respondents Castelos in the Municipal Court of Quezon City, docketed as Civil Case No. 6743. On November 12, 1959, respondents Castelos likewise filed a complaint with the CFI of Rizal, Branch V, Quezon City, against herein petitioners, docketed as Civil Case No. Q-4795.

The petitioner's case for unlawful detainer (Civil Case No. Q-6743) was dismissed for lack of jurisdiction, both by the City Court and the Court of First Instance of Quezon City. Upon appeal to the Court of Appeals, the latter court certified the case to this Court as one involving purely a question of law. It was accepted and docketed as G. R. No. L-19330, and decided on April 30, 1965, affirming the judgment of the lower court, as follows:

"IN VIEW OF ALL THE FOREGOING the decision appealed from is hereby affirmed in full, with costs against the appellant. This decision is without pre-judice to the filing by the appellant of whatever claims it may have under the controverted deed of sale." (Underscoring Ours)

On the other hand, the same Court of First Instance decided Civil Case Q-4795 as follows:

"WHEREFORE, judgment is rendered in this case as follows:

- Declaring the deed of sale with right of repurchase as additional security for the loans with the Philippine Bank of Commerce;
- Ordering the cancellation of TCT No. 35546, in the name of the defendant and its reconveyance to the plaintiffs;
- Ordering the plaintiffs to pay the defendant the sum of P2,698.15 and upon payment of which the Indemnity Agreement with Chattel Mortgage is hereby ordered cancelled."

This decision was appealed to the Court of Appeals where it was docketed as CA-G. R. No. 29574-R. As set forth in the decision of the Court of Appeals, the facts of Civil Case Q-4795 are as follows:

"Substantially, the complaint alleges that by virtue of a contract to sell, J. M. Tuason, Inc. represented by its agent, Gregorio Araneta, Inc. was bound to convey plaintiffs its ownership over a lot upon receipt of the total purchase price which was payable by installment; that meanwhile, plaintiffs were given possession of the lot, and had built a house thereon; that before complete payment of the purchase price, plaintiffs, through the help of defendant General Insurance and Surety Corporation, obtained from the Philippine Bank of Commerce a loan of P4,000.00 documented by a promissory note wherein defendant signed as accommodation co-maker; that in view thereof, plaintiffs entered into indemnity agreements with defendant whereby they mortgaged to the latter the house as well as the lot; that the mortgage of the lot, did not however meet with the approval of Gregorio Araneta, Inc. because the same had not yet been fully paid for by plaintiffs; that on, account of this, plaintiffs executed in favor of defendant a "Deed of Sale with Right of Repurchase" (in lieu of the real estate mortgaged) whereby they sold to the latter all their rights and interests over the lot; that subsequently, plaintiffs again obtained, thru the help of the defendant, a loan of P600.00 from the Philippine Bank of Commerce, likewise with defendant as accommodation co-maker of the corresponding promissory note; that eventually thereafter, defendant paid the balance of the purchase price of the lot to Gregorio Araneta, Inc. and thereby succeeded in obtaining from the latter a deed of sale thereof in its favor, and later on an owner's title over the property - Transfer Certificate of Title No. 35546 issued by the Register of Deeds of Quezon City in defendant's name; that the aforesaid additional loan of P600.00 has already been liquidated by plaintiffs, and as regards the original loan of P4,000.00, the truth is that 'only P1,000 was received by plaintiffs and the P3,000 was left in the possession of the defendant and with which it paid Gregorio Araneta, Inc. the balance of the purchase price of the lot that though 'the aforesaid instrument executed by plaintiffs over the lot in question is on its face a deed of sale with right of re-purchase, between the parties the real contract is one of mortgage'; that in 'view of these facts, defendant is holding the title to the property in question, as a trustee and for the benefit of the plaintiff.

"Traversing the complaint, defendant in its answer with counterclaim, denied among other things that the real contract is one of mortgage instead of sale with right of repurchase, and averred in effect that it had rightfully consolidated its ownership over the lot in question as vendee a retro." (Underscoring Supplied)

Among the several errors attributed to the trial court is that it abused its discretion in denying defendant's motion for postponement and in refusing to set aside its order directing plaintiffs to adduce their evidence ex-parte before a Commissioner. The Court of Appeals, on August 18, 1965, rendered judgment for the defendant, as follows:

"On top of this, it must be reckoned that the case had previously been set for hearing seven times and defendant, thru counsel, was present and ready for trial every time, but for one reason or another, the trial court has kept on ordering the postponement either *motu proprio* or on plaintiffs motion. On the other hand, defendant's request for postponement was the very first on its part.

"We think that the demands of justice and equity would call for the remanding of this case to the trial court so as to give the defendant a fair chance to cross-examine plaintiffs' witness and adduce its own evidence.

"Accordingly, the decision appealed from is hereby set aside, and this case will be remanded to the court a quo for further proceeding permitting the defendant to cross-examine plaintiffs witness and to adduce its evidence." (Underscoring Ours)

After the remand of the case to the Court of First Instance for further proceedings, the defendant, now herein petitioner, on April 12, 1967, filed a motion for leave to file an amended answer with counterclaim which, as aforementioned, was denied by the lower Court in its order of June 7, 1967, now subject of this petition for review.

The decisive question to determine is whether or not the amendments with counterclaim sought to be included by petitioner in the amended answer, particularly paragraphs 8, 12, 15 and 16, really changed the theory of

petitioner's defense. A comparison of the aforementioned paragraphs, both of the original and amended answers, is in order. Paragraph 8 of the original and amended answer, respectively read as follows:

"8. That defendant specifically denies the allegations contained in paragraph 8 of the Complaint, the truth of the matter being, the 'Deed of Sale with Right of Redemption of his Equitable Rights' only (because all that he had at the time was a right to buy the land in question from the Gregorio Araneta, Inc.) was a distinct transaction; that whatever transaction on the said land of Gregorio Araneta, Inc., which did not meet with the approval of the same, could not have been carried out because Gregorio Araneta, Inc. was then the owner of the land and not the plaintiffs;" (Original Answer with Counterclaim, Annex "B" of Petition)

"8. That defendant specifically denies the allegations contained in paragraph 8 of the Complaint, the truth of the matter being that the 'Deed of Sale with Right of Repurchase' was not over the lot in question but on plaintiffs' equitable rights only because all that plaintiffs had at the time was a right to buy the land in question from Gregorio Araneta, Inc., by virtue of the Transfer of the same made in his favor by Raymundo P. Fernando; and that the reason for its execution by plaintiffs was not as alleged in par. 8 of the Complaint, but because Gregorio Araneta Inc. required the plaintiffs to transfer their rights, titles and interests on the said lot by means of a deed of sale." (Amended Answer with Counterclaim, Annex "D-1" of Petition)

In paragraph 8 of the Original Answer, the theory of the defense is that the original transaction proposed by respondents Castelos on the land of Araneta, Inc. did not meet with the approval of the latter and was not carried out because the Deed of Sale with Right of Repurchase was not over the lot of Araneta but on respondent Castelos' equitable rights only, because all that respondents had at the time of execution of the said deed of sale was a right to buy the land in question. Comparing said theory of defense with that embodied in the amended answer, We believe that there was no change in the line of defense, the amended answer being only an amplification of the original answer. The respondents' assertion that paragraph 8 of the Amended Answer is a substantial amendment and a complete turnabout from its original stand is unwarranted, as evidenced by the Deed of Sale with Right of Repurchase (Annex "A" of the complaint), executed by no less than the petitioner and respondents themselves, clearly showing that it was Gregorio Araneta, Inc., and not herein petitioner which required the execution of the said Deed of Sale with Right of Repurchase. Pertinent portion of the said Deed of Sale reads as follows:

"WHEREAS, a previous Deed of Indemnity Agreement with Real Estate Mortgage of their rights, title and interests in the above described parcel of land executed by the SELLERS in favor of the BUYER did not meet the approval of the GREGORIO ARANETA, INC., and instead has required the SELLERS to transfer such rights, titles and interests to the BUYER by means of a document of a deed of sale with right of repurchase;"

Besides no valid mortgage could have been executed between the parties as the respondents were not the absolute owners of the land as required by Art. 2085 of the New Civil Code.[1]

Paragraph 12 of the petitioner's original and amended answer, respectively, read thus:

"12. That defendant specifically denies the allegations contained in paragraph 12 of the Complaint, the truth of the matter being, the consideration for the execution of said deed of sale with right of repurchase is the sum of P2,800.00 paid by the defendant."

"12. That defendant specifically denies the allegations contained in paragraph 12 of the Complaint, the truth of the matter being that the aforesaid loan of plaintiffs for P2,800.00 with the Bank was not secured at all by the Indemnity Agreement with Chattel Mortgage referred to in said par. 12 of the Complaint for there was no such subsisting indemnity agreement, or by any collateral of the plaintiffs as far as the loan of P4,000 reduced later to P2,800.00 is concerned; that the consideration for the execution of said Deed of Sale with Right of Repurchase was the sum of P2,800.00 paid by the defendant to the Bank as stated in par. 11 of this Answer."

An analysis of the allegations set forth in the above-quoted paragraphs points out more clearly that the petitioner's defense "that the consideration for the execution of the Deed of Sale with Right of Repurchase is the sum of P2,800.00 paid by petitioner to the Bank" for the loan of respondents Castelos who failed to pay the same when it became due, and that said loan was not secured at all by any collateral or by the alleged Indemnity Agreement with Chattel Mortgage, has neither been changed nor altered. Moreover, paragraph 7 of the Original Answer states:

"7. That defendant specifically denies the allegations contained in paragraph 7 of the Complaint, the truth of the matter was that the chattel mortgage on the house is a separate transaction from the 'Deed of Sale with Right of Repurchase;'"

and paragraph 7 of the Amended Answer alleges:

"7. That defendant specifically denies the allegations contained in paragraph 7 of the Complaint, the truth of the matter is that in consonance with the suggestion of Gregorio Araneta, Inc. after its disapproval of the afore-said real estate mortgage on the lot in question on October 13, 1952, plaintiffs executed the Deed of Sale with Right of Repurchase referred to in their Complaint. Defendant further alleges that plaintiffs executed on March 5, 1953, an Indemnity Agreement with Chattel Mortgage on the house of plaintiffs, but it was a counterbond in favor of the defendant for the latter's having signed as co-maker on a promissory note for plaintiffs' loan of P600.00 with the Philippine Bank of Commerce, which was completely a separate transaction from the 'Deed of Sale with Right of Repurchase.'"

The alleged indemnity agreement with chattel mortgage was, therefore, a separate transaction, and the deed of sale was for a consideration, as elucidated by the Amended Answer.

Paragraph 15 and 16 of the petitioner's original answer, likewise read thus:

"15. That defendant specifically denies the allegations contained in paragraph 15 of the Complaint for the reason that while it is true that they were granted a loan of P4,000.00 by the Philippine Bank of Commerce, before the said loan was made available by the Bank, they already received from defendant the sum of P1,000 out of their loan of P4,000 and the amount of P1,200.00 was also partially paid to the same upon plaintiffs own instruction, thus reducing their loan to only P2,800.00. When this balance of P2,800.00 became due finally, the plaintiffs did not pay it and the same was debited, therefore, by the Bank from defendant's current account as co-maker. It is therefore not true that the 'Deed of Sale with Right of Repurchase' has no consideration as falsely alleged by plaintiffs in paragraph 11 of their Complaint to mislead this Honorable Court.

"16. That defendant specifically denies the allegations contained in paragraph 16 of the Complaint, the truth of the matter being, that defendant has never been appointed trustee by anyone, much less by the plaintiffs, and defendant cannot see its way clear how the Transfer Certificate of Title No. 35546 could have been issued in its name as the sole and absolute owner thereof by the Register of Deeds of Quezon City if it is a mere trustee;"

And paragraphs 15 and 16 of its Amended Answer are as follows:

"15. That defendant specifically denies the allegations contained in paragraph 15 of the Complaint, the truth of the matter is that out of the proceeds of the plaintiffs' loan of P4,000.00 with the Bank, plaintiffs received directly from defendant the sums of P1,000.00 and P410.07 on September 12, 1952 and October 14, 1952, respectively; and because of the agreement had between them and stipulated in the aforesaid Deed of Sale with Right of Repurchase, the sum of P1,200.00 was paid to the Bank to reduce the said loan of P4,000 to P2,800 and another sum of P1,000 to Gregorio Araneta, Inc. for the back installments on the aforesaid lot which were not paid by the plaintiffs and were already overdue; and the balance of P389.93 was applied on the bank charges, inspection fee, documentary stamps and documentation of the deed of sale, insurance premiums and other expenses in connection with the aforesaid loan. Hence, after making all the aforesaid

payments, there was no balance left with the defendant out of the proceeds of the plaintiffs' loan of P4,000; and there-after, whatever payments made by the defendant on the installments on the a-foresaid lot were from defendant's own money and for its own account.

"16. That defendant specifically de-nies the allegations contained in para-graph 16 of the Complaint, the truth of the matter is that after the aforesaid payment of P1,000 on October 14, 1952 was made to Gregorio Araneta, Inc., all the payments made by the defendant to Gregorio Araneta, Inc. for the ins-tallments on the aforesaid lot, until the price thereof was fully paid, were the money of the defendant and for its own account, and, consequently, the title to the aforesaid lot was transferred to the defendant in its own right and account by the former owner J. M. Tuason, Inc., through Gregorio Araneta, Inc., of the aforesaid lot. Moreover, the de-fendant has never been appointed trust-ee by anyone, much less by the plain-tiffs, and defendant cannot see its way clear how the Transfer Certificate of Title No. 35546 could have been issued in its name as the sole and absolute owner thereof by the Register of Deeds of Quezon City if it is a mere trustee."

In paragraphs 15 and 16 of the original answer, the petitioner specifically denies the respective allegations contained in paragraphs 15 and 16 of the Complaint, thus controverting all the allegations in the latter pleading. It denies that it is holding the title of the property in ques-tion as a trustee for the benefit of the respondent. In the amended answer, the petitioner, without changing its defense theory, gave a more accurate statement and explana-tion of the circumstances involving the land; the different items covered by the P4,000.00 loan, and the events lead-ing to the issuance to them of the Transfer Certificate of Title.

Upon careful comparison of the disputed paragraphs in both the original and amended answers, this Court is of the opinion that the amendments sought to be included did not in any manner change the theory of the defense. Hence the trial court should have admitted the amendments (*Shaf-fer v. Palma*, 22 SCRA 943; *Guirao v. Ver*, 16 SCRA 639; *Uy Hoo Co. v. Tan*, 105 Phil. 719; *Monte v. Ortega*, 2 SCRA 1044).

Section 3 of Rule 10 clearly provides that:

"Amendments by leave of court. - After the case is set for hearing, sub-stantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay the action or that the cause of action or defense is substantially altered. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard."

When the purpose of an amendment is to submit the real matter in dispute without any intent to delay the action, the court in its discretion, may order or allow the amend-ment upon such terms as may be just. Anything, therefore, that may preclude a party from fully representing the facts of his case should be brushed aside, if this can be done without unfairness to the other party and by the means pro-vided for by the Rules of Court.[2]

It must be recalled that as per findings of the Court of Appeals (p. 48 of Petitions), the "hearing had been set for seven times and for seven times too it was postponed but never on motion of defendant who was always present and prepared for trial"; thereby showing that defendant, now herein petitioner, never had the slightest intent to delay the early settlement of this case but was consistently for its early decision.

Aside from the amendments to paragraphs 8, 12, 15 and 16, respondents Castelos' likewise assail paragraph 4 of the Amended Answer with Counterclaims[3] having introduced a new defense. Bearing in mind that the established policy of all courts should be to provide rules which will avoid lengthy and expensive litigation and which will assist in the speedy disposition of cases; and considering further that in the case at bar the counterclaim set forth as amend-ment is connected with the subject matter of the action, the same should be filed and interposed in the same action as a compulsory counterclaim which, if not set up, is barred. In *National Marketing Corporation v. Federation of United Namarco Distributors, Inc.*, L-22578, January 31, 1973, this Court had

occasion to extensively expound on the subject "Counterclaims". Among others it said:

"The logical relationship between the claim and counterclaim has been called 'the one compelling test of compulsoriness'. Under this test, any claim that a party has against an opposing party that is logically related to the claim being asserted by the opposing party, and that is not within the exceptions to the rule, is a compulsory counterclaim."

In this jurisdiction, "the logical relation test" has been uniformly adhered to. In *Berces v. Villanueva*, 25 Phil. 473, which was an action for ejectment, this Court said:

"When plaintiffs were sued for recovery of a tract of land, they ought to have presented in reply to the complaint a joint petition or counterclaim for the value of the improvements and the amount of damages suffered, because the claim for such improvements and the amount of damages or indemnity is necessarily related to the action for the recovery of the land said to have been improved and to the consequences of the judgment ordering restitution thereof." (Underscoring Supplied)

That ruling was reiterated in *Beltran v. Villanueva*, 53 Phil. 697; *Ozea v. Vda. de Montaur*, L-8621, August 26, 1956, 99 Phil. 1061; *Carpena v. Manalo*, 1 SCRA 1060 (cited in the *NAMARCO* case, *supra*).

In the case at bar, it is clear that the amendment in paragraph 4 setup a counterclaim for the damages suffered by the petitioner, as owner of the lot in question, for having been deprived by respondents Castelos of the use and enjoyment thereof. And said counterclaim is necessarily connected with the lot subject of the present action, it should be interposed in the same action. No new cause of action or defense is thereby interposed since the same was the subject matter between the same parties in the ejectment case filed in the municipal court, docketed as Civil Case No. 6743, but which was dismissed not for lack of merit but for lack of jurisdiction. If the amendment is not allowed, another action would have to be instituted (if not barred), against respondent Castelos, thus causing multiplicity of suits. This situation is what the rule precisely seeks to avoid and thus compel the parties to litigate all the issues in a single proceeding.[4]

The assertion of respondents that the counterclaim sought to be included as amendment to paragraph 4 in the Amended Answer should be filed as an original and separate action in the proper court, is without merit. It runs counter to a settled rule that in the furtherance of justice, the Court should be liberal in allowing amendments to pleadings to avoid multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined and the case decided on the merits without unnecessary delay.[5]

Evidently, the respondent Judge disregarded the above tenets when he denied the motion for leave to amend the answer in the manner indicated.

WHEREFORE, the orders appealed from dated June 7 and November 21, 1967, are hereby set aside and the case re-manded to the lower court for further proceedings. The respondent court shall admit the amended answer with counterclaim and proceed to the hearing and final determination of its Civil Case No. Q-4795.

Costs against private respondents.

Makalintal, C.J., Ruiz Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

[1] Art. 2085. The following requisites are essential to the contract of pledge and mortgage:

- x x x

- That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;

x x x

The same ruling has been applied in the case of *Vda. de Bautista v. Marcos*, 3 SCRA 434.

[2] *Dacanay v. Lucero*, 76 Phil. 141.

[3] "4. That plaintiffs have been occupying and using the aforesaid lot from October 13, 1952 and thus have deprived the defendant of the use and enjoyment thereof, without paying any rental to the defendant; consequently, the plaintiffs are liable to the defendant for the rental of the aforesaid lot, from October 14, 1952 up to the time that they vacate the same, for which they should pay to the defendant a rental of P50.00 per month;"

[4] *Heirs of Roxas v. Galindo, et al.* 108 Phil. 589.

[5] *Diaz, et al. v. De la Rama, et al.*, 73 Phil. 104; *Chua Kiong v. Whitaker, et al.* 46 Phil. 578 as cited in *Morans Comments on the Rules of Court*, Vol. I, 1970 ed. 371.

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