

**PANTALEON PINGKIAN AND AGRIPINA YABO, PETITIONERS, VS.
HON. JUDGE MELECIO A. GENATO, MAXIMA VDA. DE CALOG, DAVID
CALOG AND CATALINA SUMALPONG, RESPONDENTS.**

G.R. No. L-49671. April 28, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review the actuaciones of the respondent judge in Civil Case No. 2700 of the Court of First Instance of Misamis Occidental, Branch I, at Oroquieta City. The following are the antecedent facts:

On September 3, 1968, Francisco Calog filed the aforesaid civil case for the recovery of real property with damages against Pantaleon Pingkian and Agrifina Yabo. The defendants filed their answer to the complaint in due time but subsequently, with leave of court and over the opposition of the plaintiff, the defendants filed a third party complaint against David Calog and Catalina Sumalpong, who are among the private respondents herein. It appears that Pingkian and Yabo had bought the land sought to be recovered from the third party defendants David Calog and Catalina Sumalpong and as vendees they sought to enforce their warranty against eviction against the two. Respondent judge admitted the third party complaint, "In order to avoid multiplicity of suits and pursuant to Section 15, in relation to Section 12, of Rule 6 of the Revised Rules of Court."

The third party defendants moved to dismiss the complaint against them but their motion was denied and they had to file their answer. Thereafter, respondent judge issued an order, upon motion of Pingkian, that "the evidence of defendant Pantaleon Pingkian is hereby considered and adopted as evidence against the third-party defendants."

On February 15, 1974, respondent judge rendered a decision in favor of Francisco Calog, the plaintiff, against the defendants Pantaleon Pingkian and Agripina Yabo. However, respondent judge did not decide the third party complaint. Despite a subsequent motion filed by the defendants praying that the third party complaint be resolved, still respondent judge failed to do so. Defendants appealed to the Court of Appeals and in C.A. G.R. No. 55528-R, said court on June 2, 1977, affirmed the lower court's judgment but modified it as to the award of damages. The appellate court also directed the lower court to rule on the third party complaint. The dispositive portion of the Court of Appeals decision reads as follows:

"IN VIEW WHEREOF, judgment is modified such that the award for damages is reduced to 2,000 coconuts per year from date of filing of complaint until delivery of the property to plaintiff, and further, ordering that trial court proceed to rule on the 3rd party complaint, costs against defendants."

In the meantime, plaintiff Francisco Calog died and he was substituted by his surviving spouse, Maxima Vda. de Calog who is the other private respondent.

It should be stated that the decision of the Court of Appeals has been partially executed for the land in controversy was placed in the possession of the heirs of Francisco Calog on September 18, 1978. The award of damages has not been executed for the petitioners herein have refused to pay it relying on the Court of Appeals decision that

the lower court should decide the third party complaint.

Going back to Civil Case No. 2700, after the Court of Appeals had remanded the case to the lower court, respondent judge dismissed the third party complaint stating that the remedy of the evicted vendees was to file a separate action for enforcement of warranty. In his Order dated September 7, 1978, respondent judge said in part:

"As to the second incident, this Court noted that although it issued an order admitting the amended answer of the defendants, it did not make any specific ruling admitting the third party complaint therein contained. Nonetheless, summons were issued and the third party defendants filed their responsive pleadings thereto in the form of a motion to dismiss. However, this Court opined in its order of February 24, 1971 that the purpose of bringing David Calog and Catalina Sumalpong into this case was because they were the vendors of the property and according to Article 1559 of the New Civil Code they may be made co-defendants at the instance of the defendant vendees. In other words, the filing of the third party complaint was not necessary, for the vendors could have been made party-defendants by amending plaintiff's complaint. But be that that is it may, the requirement of Article 1559 aforecited has been complied with by bringing the vendors into the case. Accordingly, the defendants may now properly file an action against them for the enforcement of warranty against eviction. This Court is of the opinion and so holds that this action should be ventilated in a separate proceeding as the parties were unable to fully and substantially adduce evidence on said third party complaint."

It is this Order of respondent judge which petitioners want us to review on the ground that it is contrary to law.

We agree. Contrary to what respondent judge stated in his Order, he did admit the third party complaint. In fact as he himself stated summons were issued to the third party defendants who at first filed a motion to dismiss and an answer when the motion to dismiss was denied. Respondent judge went further by ordering that "the evidence of defendant Pingkian is hereby considered and adopted as evidence against the third party defendants." Respondent judge claims that this order needed the conformity of the third party defendants. This is not correct for the order is unqualified and was not objected to by the third party defendants. Issues having been joined and evidence received, it was the duty of respondent judge to decide the third party complaint and not simply to dismiss it.

It is alleged that under Art. 1557 of the Civil Code, "The warranty cannot be enforced until a final judgment has been rendered, whereby the vendee loses the thing acquired or a part thereof." But this requirement had been complied with when both the trial court and the Court of Appeals rendered judgment against the petitioners-vendees. It was for this reason that the Court of Appeals ordered respondent judge to rule on the third party complaint not in a separate case but in the same case which was the subject of the appeal. And when the Court of Appeals ordered respondent judge to rule on the third party complaint, the intent was that he decide it on the merits and not simply to dismiss it.

Respondent judge admitted the third party complaint, "In order to avoid multiplicity of suits," to quote his own words. His order that petitioners file another suit to enforce their warranty contradicts his previous orders. It would serve no useful purpose for petitioners to litigate separately. On the contrary it would only expose them to unnecessary expenses and cause them undue delay in the resolution of their claim.

WHEREFORE, the petition is granted. Respondent judge is ordered to render a decision on the third party complaint and in the meantime to suspend execution of the judgment in respect of the damages awarded to the plaintiff in Civil Case No. 2700. No special pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., and De Castro,[*] JJ., concur.

Aquino, J., concurs. The trial court should have followed the clear mandate of the Court of Appeals which is the law of the case. Moreover, a court should strive to settle the entire controversy in a single proceeding, leaving no

root or branch to bear the seeds of future litigation (Marquez vs. Marquez, 73 Phil. 74, 78).
Antonio, J., is on leave.

[*] Justice Pacifico de Castro has been designated to sit with the Second Division.

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