

(With Resolution of Feb. 26, 1065)

G. R. No. L-18621. November 28, 1964

Ponente: REGALA, J.

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REGALA, J.:

The facts of this case, as determined by the Court of Appeals and borne by the evidence, are as follows:

"About September 11, 1953, Cirilo S. Damian was granted authority by the Philippine Air Force, Philippine Army, to repair buildings belonging to the PAF. For Damian's services, it was agreed that he would be paid in surplus properties.

"After having received therefor certain surplus properties, Damian, on September 23, 1955 (Letter, Exhibit 3-A, PAF) assigned his rights to the balance in surplus properties due him (deed, Exhibit I) in favor of plaintiff Salvador D. Lacuna who forthwith, as said assignee, notified the Philippine Air Force of the assignment in his favor on September 24, 1955 (Exhibit K).

"Subsequently, however, that is, on June 14, 1956, Cirilo S. Damian coursed a letter (Exhibit R-4) addressed to the Commanding General of the PAF in which he stated that:

'Because of the failure of Mr. Salvador D. Lacuna to comply with the obligations imposed, the deed of assignment in his favor is without consideration and said deed is heretofore revoked and without effect.

'Any delivery after this notification, is without authority and will be deemed as not receipted for by the undersigned and will not discharge your obligation due and owing to the undersigned."

"In effect, the PAF (Philippine Air Force) notified Lacuna that it would no longer honor the previous assignment. Inasmuch, however, as there was still due in favor of Damian from the PAF the sum of P8,624.69 (Exhibit H) and because the assignee Salvador has not yet been paid what was due him, he (Lacuna) filed the instant complaint against the Philippine Air Force and included therein as defendant the Board of Liquidators which was then in charge of the surplus properties. Note that in plaintiff's complaint his assignor Cirilo S. Damian was not included as party-defendant."

The action was for specific performance with a prayer for an order commanding the defendants "to recognize the Deed of Assignment executed by Cirilo S. Damian in favor of the plaintiff and to implement the provisions thereof." After trial, the Court of First Instance of Manila, where this suit was initiated, dismissed the complaint. On elevation of the Court of Appeals, the dismissal was affirmed. Hence this petition for certiorari.

The Court notes from the records of this case that the assignor, Cirilo Dnmian, filed a motion for intervention in the trial court which motion, however, was denied by the trial judge. Even the Court of Appeals in its decision made special note of the fact Hint in the complaint filed by the assignee, the assignor was excluded as a party defendant. After carefully going over the points and issues raised in this appeal, it is our view that the intervention of the assignor should have been allowed. He is clearly an indispensable party to this suit and the failure to hear his side would not only be an injustice to him but would likewise prevent a fair and just review of this appeal.

Of course, We are aware that the assignor has not appealed from the order denying his motion for intervention. Be that as it may, We believe that he should be allowed to intervene in the interest of justice.

In view of all the foregoing, let the records of this case lie remanded to the trial court with instruction to allow the assignor's intervention and thereafter to render judgment accordingly. So ordered.

Bautista Angelo, Concepcion, Paredes, Dizon and Bengzon, J.P. concur.

RESOLUTION

February 26, 1986

REGALA, J.:

This Court, deliberating on the Motion for Reconsideration filed by the Petitioner Salvador D. Lacuna and on the Verified Urgent Manifestation of Cirilo Damian waiving his right to intervene as an indispensable party to this suit resolves:

First, to deny the Motion for Reconsideration filed by the petitioner, Salvador D. Lacuna, for having been filed out of time; and

Second, to reiterate the Resolution of this Court promulgated on November 28, 1964, ordering the remand of the records of this case to the court of origin for the purpose of allowing the assignor's intervention as an indispensable party.

The proceedings on the remand should be limited to the presentation by the intervenor-appellant, Cirilo S. Damian, of his evidence, and to the corresponding rebuttal evidence of the same by the other parties. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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