

PABLO COTAOCO, PETITIONER, VS. RAFAEL DINGLASAN, JOSE L. UY, ET AL., RESPONDENTS.*G.R. No. L-2004. May 24, 1949*

Ponente: TUASON, J.

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It appears that Pablo Cotaoco, the petitioner, brought an action against Jose L. Uy and others to recover certain real property and a sum of money by way of rents and damages. After the plaintiff had introduced his evidence and rested, the defendants, through counsel, filed a motion to dismiss action for the alleged reason that the plaintiff was shown not to be the real party in interest but his brother, Mariano Cotaoco. That motion was denied, whereupon the plaintiff filed a motion for judgment on the merits. The latter motion was likewise denied, as was also a subsequent motion for reconsideration.

The plaintiff now applies from this Court a command to the trial judge to decide the case as he prayed in the court below and to restrain His Honor from receiving evidence for the defendants or from taking any further step. In support of the petition, he cites *Moody, Aronson & Co. vs. Hotel Bilbao*, 50 Phil., 198; *Gonzalez Castro vs. Azaola*, 63 Phil., 841; and *Arroyo vs. Andrea Azur*, 76 Phil., 493.

We do not think the petitioner is entitled to the relief applied for. The cases cited do not sustain his position. It will be observed that in each of those cases the defendant appealed. In the present case no appeal was taken from the court's order.

The decisions relied upon do not rest on any positive law, but on general "rules which will avoid lengthy and expensive litigations and which will assist in the speedy disposition of cases." The mere filing of a motion to dismiss and the adverse ruling thereon by the trial court do not create a multiplicity of suits which the law abhors; it is the prosecution of an appeal from the court's decision that does. Before a case has left the hands of the trial court, the latter, at the very least, ought to have discretionary power to allow the presentation of evidence by the defendant. In fact the refusal of the lower court to bar the defendants from introducing evidence and to decide the cause solely on the evidence already adduced, is in accord with this Court's admonition in *Castro vs. Azaola*, supra. In that case the court stressed the advisability of deferring action on a motion to dismiss until all the evidence was in. It said: "This Court is of the opinion that in cases like this the defendant should be required to present his evidence instead of acting upon his motion to dismiss, so that should the court find the decision to be erroneous, it would not have to remand the case to the court of origin for further proceedings, * * *" The court's denial of the motion to dismiss amounted in its results to a compliance with that injunction. In denying the motion instead of not acting thereon, the court has not closed the door to the dismissal of the case on the grounds stated in the motion after both parties have submitted the case for decision. On the other hand, the situation envisaged by the court in the *Azaola* decision was likely to materialize in the case at bar if the trial court were to exclude the defendants' evidence and this Court should reverse the decision, because the motion to dismiss is not predicated on insufficiency of the evidence on the issues joined in the pleadings, but on the alleged fact that the plaintiff is a mere dummy of his brother. The motion to dismiss raises a side issue leaving entirely out of the picture the

cardinal defense that the deed fo sale with a mortgage, on which the action is based, "does not express the true intent and agreement of the parties," a defense which could not properly be determined on the plaintiff's proofs alone.

We are not prepared to say that the respondent judge committed a mistake. This conclusion makes superfluous discussion of the special plea that mandamus does not lie in the case at bar.

The petition is denied with costs against the petitioner.

Ozaeta, Paras, Feria, Pablo, Perfecto, Bengzon, Montemayor, and Reyes, JJ., concur.

Moran, C. J.:

I concur in the result.

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