

FILIPINAS INDUSTRIAL CORPORATION, RUBEN & CO., INC., AND HONORIO ALLADO, PETITIONERS, VS. HON. LOURDES P. SAN DIEGO, PRESIDING JUDGE, BRANCH IX, COURT OF FIRST INSTANCE OF RIZAL...*G.R. No. L-22347. May 27, 1968*

Ponente: ZALDIVAR. J.

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A petition for certiorari with preliminary injunction seeking to enjoin respondent Judge Lourdes P. San Diego of the Court of First Instance of Rizal, Branch IX, from further proceeding in Civil Case No. Q-7228 in said court and to have the complaint therein dismissed.

On May 3, 1963, herein respondent Pastor D. Ago filed a complaint with the Court of First Instance of Rizal for damages with preliminary attachment and injunction, entitled "Pastor D. Ago, in his capacity as attorney-in-fact of Francisco Laiz, Plaintiff, versus Filipinas Industrial Corporation, Ruben & Company, Incorporated, Honorio Allado, Arnaldo Borre, Forestry Officer in Charge in General Santos, Cotabato, and Emilio Ongoy, Customs Inspector on Board M/S Kocho Maru, Defendants", which was docketed as Civil Case No. Q-7228. The allegations of the complaint, relevant to the instant petition, are: that plaintiff Pastor D. Ago is a resident of 27 A. Roces Ave., Quezon City, and is the true and lawful attorney-in-fact of Francisco Laiz, with full power to sue and file complaint for the protection of the rights and interests of the latter by virtue of a special power of attorney duly executed by said Francisco Laiz in favor of plaintiff, a photostatic copy of which is annexed to the complaint as Annex A; that the defendant Filipinas Industrial Corporation has its principal office at General Santos, Cotabato; that defendant Ruben & Company, Incorporated has its principal office at General Santos, Cotabato; that defendant Honorio Allado is a resident of Davao City; that defendant Arnaldo Borre is a resident of General Santos, Cotabato; and defendant Emilio Ongoy is a resident of Davao City. In the copy of the power of attorney, Annex A to the complaint, it appears that Francisco Laiz is a resident of General Santos, Cotabato.

On May 16, 1963, herein petitioners, — defendants in the court below — filed an urgent motion to dismiss the complaint upon the ground that the venue of the action was improperly laid, it appearing that the complaint involves a personal action and Pastor D. Ago filed the complaint merely as an attorney-in-fact of Francisco Laiz who is the real party in interest and who is a resident of General Santos, Cotabato; and it appearing, further, that the residence of the parties defendants is either General Santos or Davao City, so that pursuant to Section 1 of Rule 5 of the (old) Rules of Court the action could be commenced only either in the Court of First Instance of the province of Cotabato or of Davao City, and not of Quezon City. On May 17, 1963, therein defendants filed a supplemental motion to dismiss the complaint, alleging the additional ground that the action is brought in the name of the real party in interest.

Plaintiff Pastor D. Ago filed his opposition to the motion to dismiss, arguing that Section 1, Rule 5 of the Rules of Court speaks of "plaintiff" and not "party in interest" and since he was the plaintiff and residing in Quezon City,

the complaint could be filed in Quezon City; that even if the word "plaintiff" in said section be held to mean "party in interest", he would be such inasmuch as he was not a mere attorney-in-fact but had full power and authority to file the complaint; that whatever defect there might be regarding venue, said defect had been waived because the defendants voluntarily appeared before the court when, through counsel, on May 13 and 15, 1963, during the hearing of the motion for preliminary injunction and motion to discharge attachment, they freely submitted to its jurisdiction by filing with the court the "Urgent Motion to Discharge Attachment" dated May 11, 1963, the "Motion to Dissolve Attachment" dated May 14, 1963, and the "Urgent Motion to Dismiss" dated May 17, 1963.

Both the original motion to dismiss and the supplemental motion to dismiss were denied by respondent Judge Lourdes P. San Diego in her order of August 12, 1963. In her order respondent Judge stated that the law of agency concedes the possibility of an agent, when so expressly authorized, to sue for and in behalf of the principal in his own name, and all that the law requires is that the agent should allege that he is pursuing the action for and in behalf of his principal, so that plaintiff Pastor D. Ago being a duly authorized agent, whatever judgment might be rendered for or against him would surely be executed for or against Francisco Laiz himself. Respondent Judge further ruled that since the residence of Pastor Ago is in Quezon City he can file the suit in the Court of First Instance of the place where he resides.

A motion for reconsideration of the order of August 12, 1963 having been denied, therein defendants — now petitioners — filed the instant petition, alleging that respondent Judge had acted whimsically and capriciously and with grave abuse of discretion, tantamount to having acted without jurisdiction, in completely and absolutely disregarding the applicable provisions of the law and the clear and unequivocal rule established by this Court that an agent, attorney-in-fact or authorized representative can not bring an action in his own name in behalf of a disclosed principal. Petitioners prayed for a writ of preliminary injunction enjoining respondent Judge from further proceeding in Civil Case No. Q-7228 pending decision of the instant petition, and, after hearing, to order respondent Judge to dismiss the complaint in said case.

In a resolution of January 24, 1964, this Court ordered respondents to file their answer and, upon petitioners' posting the required bond, issued a writ of preliminary injunction enjoining respondent Judge from further proceeding in Civil Case No. Q-7228.

The principal question to be decided in the present case may be formulated as follows:

May an attorney-in-fact, when so authorized in the power of attorney, bring an action in his own name for a disclosed principal?

This is a well settled question.

Section 2 of Rule 3 of the old Rules of Court provides that "Every action must be prosecuted in the name of the real party in interest." [1] This provision is mandatory. The real party in interest is the party who would be benefited or injured by the judgment or is the party entitled to the avails of the suit. [2]

This Court has held in various cases that an attorney-in-fact is not a real party in interest, that there is no law permitting an action to be brought by an attorney-in-fact, and hence an action brought by him cannot be maintained. In the case of "Jose M. Arroyo, as attorney-in-fact of Ignacio Arroyo, plaintiff and appellee vs. Matias Granada and Celedonia Gentero, defendants and appellants," [3] the plaintiff Jose M. Arroyo was given full power of attorney by his father Ignacio Arroyo to transact his affairs. Jose Arroyo brought the action as "apoderado" of his father. In dismissing the complaint, this Court held:

"In a sense this opinion on the merits is useless, for the reason that the person bringing the action has no

interest whatever in the subject matter thereof and can have no interest whatever in any judgment rendered therein. The action is brought in the name of Jose M. Arroyo as apoderado of Ignacio Arroyo. There is no provision of law permitting an action to be brought in that manner. Jose M. Arroyo, as apoderado, has absolutely no interest in this litigation. He has absolutely no right to bring the defendant into court or put him to the expense of a litigation. The real and only party in interest is Ignacio Arroyo. Under articles 114 and 122 of the Code of Civil Procedure he should be plaintiff. He is not a party to this action and has in no way appeared or taken part herein. A judgment for or against Jose M. Arroyo personally or as apoderado in no way binds or affects Ignacio. As a necessary result a decision in this case is utterly futile. It does nothing. It touches no interest, settles no question, binds no party, quiets no litigation. Courts ought not to be required to spend their time solemnly considering and deciding cases where nobody can be bound and no interests affected as a result of such deliberation and decision."

In the case of "Catalino Hilario, representing Andres Garcia, plaintiff and appellant vs. La Congregacion de San Vicente de Paul, Robert M. Loper, and Henry M. Jones, defendants and appellees"[4] this Court, in affirming the judgment sustaining the demurrer to the complaint, held:

"This action can not be maintained even though no account be taken of whether or not the complaint states facts sufficient to constitute a cause of action in the sense presented by the demurrer. The action is brought, as will be observed from the title, by Catalino Hilario in representation of Andres Garcia. The complaint alleges: 'That Catalino Hilario, by virtue of a power of attorney executed in the City of Manila on the 31st day of January, 1911, has authority from Andres Garcia to represent him in the present action, and that he resides at No. 239 Calle Magdalena, Trozo, Manila, Philippine Islands.'

"It is not contended that the real party in interest, Andres Garcia, is a party to this action, or that he has appeared or taken any part therein or that he has in any manner submitted himself to the jurisdiction of the court. A judgment rendered against the plaintiff might have no force or effect against Andres Garcia. We have several times held that an action brought in this manner cannot be maintained, and this court will, of its own motion, refuse to proceed with its consideration. (Lichauco vs. Limjuco, 19 Phil. Rep., 12.) The question of the power of plaintiff to bring the action is raised, at least indirectly, by the demurrer based upon the ground that the complaint does not state facts sufficient to constitute a cause of action. On its face the complaint shows that there is no cause of action in favor of the plaintiff, but, rather, that the cause of action, if any, exists solely in favor of Andres Garcia. Hilario has no interest in the controversy and stands as a naked representative of the person who does have the interest. The complaint, therefore, does not state facts sufficient to constitute a cause of action in favor of the present plaintiff."

In the case of "C.E. Salmon and Pacific Commercial Company, petitioners vs. Chino Tan Cuevo, Vicente Jocson, Judge of Thirteenth Judicial District, Antonio Babasa, provincial, sheriff of Batangas, and Gavino Singomoto, respondents"[5] this Court reiterated the doctrine enunciated in two cases above-cited, when it said:

"It appears from the record that on the 21st day of February, 1916, a complaint was duly filed in the Court of First Instance of the Thirteenth Judicial District in an action entitled Chino Tan Cuevo vs. Antonio Babasa, sheriff of the Province of Batangas, Agapito E. Garcia, attorney-in-fact of the Pacific Commercial Company, and C.E. Salmon, defendants. The action went to a judgment in favor of the plaintiff and against defendants. . .

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...

"As to the applicant the Pacific Commercial Company, there can be no question that the judgment obtained below is void. According to the record, not only was the Pacific Commercial Company not served with summons, but it was not even named in the process or pleadings as a party to the action. The title of the case shows that the company was not a party. The making of Agapito E. Garcia, attorney-in-fact of the Pacific Commercial Company, a party defendant does not make the company a party defendant. Section 114 of the

Code of Civil Procedure requires an action to be brought in the name of the real party in interest; and a corollary proposition requires that an action shall be brought against the persons or entities which are to be bound by the judgment obtained therein. An action upon a cause of action pertaining to his principal cannot be brought by an attorney-in-fact in his name (*Arroyo vs. Granada and Gentero*, 18 Phil. Rep., 484); or can an action based upon a right of action belonging to a principal be brought in the name of his representative (*Lichauco vs. Limjuco and Gonzalo*, 19 Phil. Rep., 12). Actions must be brought by the real parties in interest and against the persons who are to be bound by the judgment obtained therein.

". . . As to the Pacific Commercial Company the judgment to which these proceedings refer, namely, that obtained in the case entitled *Chino Tan Cuevo vs. Antonio Babasa*, sheriff of the Province of Batangas, *Agapito E. Garcia*, attorney-in-fact of the Pacific Commercial Company, and *C.E. Salmon*, is declared void and of no effect as against the said company, . . ." (*Italics supplied*)

Respondent Pastor Ago contends, and respondent Court upheld him in his contention, that he could file the complaint in the case at bar because he is specifically empowered by his principal, Francisco Laiz, "to sue, file complaint, represent me in any government office and agency for the protection of my rights, interests and privileges as a timber licensee." This contention runs counter to the ruling of this Court in the case of "*Ceferino Marcelo vs. Nazario de Leon*." [6] In this case *Ceferino Marcelo*, as "apoderado" of *Severino P. Marcelo*, filed the complaint in his name to recover the possession of a lot belonging to *Severino P. Marcelo*. *Ceferino* held a power of attorney in which *Severino* authorized him to "pursue any and all kinds of suits and actions for me and in my name in the courts of the land." This Court, however, citing the cases of "*Arroyo vs. Granada*" *supra*, and "*Hilario vs. La Congregacion etc.*", *supra*, held that the action of *Ceferino Marcelo*, as plaintiff, must fail. This Court said:

"At any rate, this action must fail upon the second ground of defendant's motion to dismiss: the plaintiff is a mere apoderado of the owner, *Severino P. Marcelo*. The rule is that every action must be prosecuted in the name of the real party in interest. (Sec. 2, Rule 3)"

It follows, from the ruling of this Court in the above-mentioned case of "*Marcelo vs. De Leon*," that even if the principal, authorizes his agent to commence actions in court for and in behalf of the principal, such action must still be filed in the name of the principal who is the real party in interest, pursuant to Section 2, Rule 3 of the Rules of Court. [7]

From what has been stated in the foregoing, it is clear that respondent Pastor D. Ago has no right to bring the action in his own name in Civil Case No. Q-7228 in the Court of First Instance of Quezon City. The action commenced by respondent Pastor D. Ago cannot be maintained and cannot prosper, and it would-be a waste of time to have the court proceed with the case, because the decision that would be rendered in that case would not bind the parties in the case. We hold that respondent Judge acted with grave abuse of discretion when she denied herein petitioners' motion to dismiss the complaint in said case, upon the ground that the complaint was not brought in the name of the real party in interest.

Having resolved the principal question raised in the present case, We deem it superfluous to consider the other questions raised by the parties.

WHEREFORE, the writ of certiorari prayed for is granted. Respondent Judge, or any other Judge who presides Branch IX of the Court of First Instance of Quezon City, is enjoined from further proceeding with Civil Case No. Q-7228 in said court, and the complaint in said case is ordered dismissed. Costs against respondent Pastor D. Ago.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

Writ granted.

[1] Also Sec. 2, Rule 3 of the new Rules of Court.

[2] Subido v. City of Manila, et al., L-14800, May 30, 1960; Salonga v. Warner Barnes & Co. Ltd., L-2246, January 31, 1951.

[3] 18 Phil., 489-490.

[4] 27 Phil., 593, 595-596.

[5] 36 Phil., 556, 557-558.

[6] G. R. No. L-12902, July 29, 1959.

[7] The same section and rule in both the old and the new Rules of Court.

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