

FAUSTINO GOJO, PETITIONER-APPELLANT, VS. SEGUNDO GOYALA AND ANTONINA ALMOGUERA, RESPONDENTS-APPELLEES.*G.R. No. L-26768. October 30, 1970*

Ponente: BARREDO, J.

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Appeal from the favorable decision of the Court of First Instance of Sorsogon on the counterclaim of respondents (herein appellees) in its Civil Case No. 1657-84 - the complaint (petition) of therein petitioner (herein appellant) having been previously

dismissed, without prejudice, for his failure to submit ,an amended complaint as required of him in the court a quo's earlier order.

The record shows that on 26 May 1951, appellee Segundo Goyala together with his now deceased wife Antonina Almoguera, who was also named respondent or defendant in the complaint or petition in the court below, sold to appellant by a "Deed of Pacto de Retro Sale" a certain parcel of agricultural land having an area of approximately two and one-half hectares for P750.00, the repurchase to be made, according to the deed, within one year. It also appears from said deed that on July 4,1951, the vendee paid another P100.00 as addition to the purchase price. About ten (10) years after the execution of the said document, or on April 12,1961, to be precise, the vendee filed with the Court of First Instance of Sorsogon the present case against the vendors by way of a petition for consolidation of ownership of the land described and involved in the "Deed of Pacto de Retro Sale." In his petition, the vendee, herein appellant, alleged, inter alia, that the date for repurchase, May 26, 1952, having expired and the vendors not having been able to repurchase the same under the terms and conditions of the agreement, the ownership over the land involved had become consolidated in him; and that for the purpose of recording in the Registry of Property the said consolidation of ownership, it was necessary that a judicial order be issued to that effect and accordingly prayed for such an order.

On May 26,1961, appellee Segundo Goyala filed an opposition or answer to the petition. He therein alleged that his wife Antonina Almoguera had died in the year 1959 and denied the allegation in the petition regarding the pacto de retro sale, "the fact of the matter being," according to him, "that on May 26, 1951, the respondents obtained a cash loan of P750.00 from the petitioner payable in one year without interest; that only on July 26, 1951, Dolores Goyala, daughter of the respondents, obtained from the petitioner the sum of P50.00 to be added and credited to the account of the respondents; and then on August 25,1951, the said Dolores Goyala received from the petitioner another amount of P10.00 to be added to and credited to the account of the respondents, (so that) the total loan of the respondents from the petitioner aggregates P810.00 Philippine Currency" and that to guarantee the payment of the said loan, the respondents executed a mortgage in favor of the petitioner on a parcel of coconut land described in Annex A of the petition, hence, altho the deed was executed or drawn in the form of a pacto de retro sale, the true and real intention of the parties thereto was that the same was a mere mortgage to secure the payment of the original loan of P750.00 together with the additional amount received thereafter, making a total loan of P810.00, payable within one year without interest. He further alleged that in the evening of May

26,1952, he and his wife went to the house of the petitioner and tendered to him the sum of P810.00 to pay the debt, but said petitioner refused to receive the same and to cancel the document of mortgage, Annex A. The said appellee also reiterated by way of counterclaim the foregoing allegations of his answer and prayed thus:

"WHEREFORE, the respondent Segundo Goyala respectfully prays this Honorable Court to dismiss the petition and render judgment in favor of the respondents as follows:

"(a) Ordering the petitioner to receive the sum of P810.00 tendered or deposited by the respondents in full settlement of their debts to him;

"(b) Declaring the document marked Annex A of the petition to be mortgage and not a pacto de retro sale, and ordering the same cancelled and with no more force and effect;

"(c) Ordering the petitioner to pay the respondents the sum of P1,800.00 per annum beginning May 26, 1951 until the final termination of this case as the reasonable monetary value of the products for the said property, and from this amount, there should be deducted however, the corresponding legal interest annually on said loans; and

"(d) In case, however, of the remote possibility that this Court should find the said instrument (Annex A) to be a true pacto de retro sale, and not a mere mortgage, it is hereby prayed that the petitioner be ordered to execute a deed of resale or repurchase of said property in favor of the respondents in accordance with Art. 1606 third paragraph of the Civil Code."

On December 1, 1962, counsel for respondent Goyala filed a manifestation informing the trial court that the named defendant (respondent) Antonina Almoguera was already dead, she having died at Labo, Camarines Norte on March 27, 1959, and that her surviving nearest kin are her children, namely: Leonor, Pedro, Juliana, Dolores, Valentina, Soledad, Penya, Mamerta, Salvador, Genesa, Felipe and Elegio - all suraamed Goyala - with residences at Bulan, Sorsogon. Hearing was had on that manifestation, after which the trial court, under date of December 4, 1962, issued the following order:

"As prayed for in the manifestation of Atty. Agustin Frivaldo, counsel for the defendant, dated December 1, 1962, on the ground stated therein, the counsel for the plaintiff is hereby required to submit an amended Complaint substituting therein for one of the defendants, Antonina Almoguera, now deceased her successors in interest as party defendants, within the reglementary period."

Subsequently, on January 26, 1963, appellee Goyala filed a motion to dismiss the complaint or petition on the ground that notwithstanding the lapse of 43 days after appellant's receipt of a copy of the above-quoted order of the trial court, said appellant had failed and neglected to submit the amended complaint required of him. The motion was opposed by appellant; and the trial court, resolving the incident, issued the following order on February 15, 1963:

"The matter under consideration is the motion to dismiss filed by the defendants on the ground that the plaintiff has failed and neglected to submit the amended complaint as required in the order of this Court dated December 4, 1962, which the plaintiff has received on December 13, 1962. From December 13, 1962 when the motion to dismiss was filed, 43 days have elapsed. On February 6, 1963 when the plaintiff has again failed to file together with said opposition the required amended complaint, and altho plaintiff has requested for a reasonable extension of time within which to file the said pleading, it is regrettable to state that up to the present has neglected to do so.

"WHEREFORE, the complaint is hereby dismissed without prejudice."

Thereafter, on July 10, 1963, appellee filed a motion to declare appellant in default in respect of said appellee's counterclaim.

contained in his answer (opposition) to the dismissed complaint (petition) of appellant. This motion was granted by the trial court in its order of July 11, 1963, to wit:

"Upon petition of the counsel for the defendant Segundo Goyala to declare the plaintiff in default on the ground of failure on the part of the plaintiff to answer the counterclaim filed by said defendant Segundo Goyala within the reglementary period, despite the fact that the plaintiff's counsel was duly served with a copy thereof, and the plaintiff's complaint was already dismissed by this Court in its order of February 15, 1963 on the ground of neglect to submit the amended complaint as required in the Court order of December 4, 1962, the plaintiff is hereby declared in default on the counterclaim filed by said defendant Segundo Goyala.

"Let the defendant Segundo Goyala submit his evidence before the Clerk of Court, who is hereby commissioned to receive the same."

As directed in the order above-quoted, the Clerk of Court received the evidence of appellee in respect of his counterclaim and, thereafter, on November 15, 1963 the trial court rendered favorable judgment on appellee's counterclaim. The pertinent portions of the decision referred to read thus:

"It appears that on May 26, 1951, respondents obtained a loan of P750.00 from the petitioner. To secure the loan, respondents executed a document, which was made a Deed of Pacto de Retro Sale (Exh. 'A'), on suggestion of petitioner to exempt himself from liabilities under the Usury Law. Dolores Goyala, one of the daughters of respondents, obtained an additional loan of P50.00 on July 26, 1951, (Exh. 'A-I') and another P10.00 on August 19, 1951, (Exh. 'A-3') from the petitioner which amounts were duly authorized and acknowledged by respondent Segundo Goyala. In the late afternoon of May 26, 1952, the last day to redeem the property, Segundo Goyala, tendered the amount of P810.00 to herein petitioner in complete payment of the loan and to release the property securing the said loan, but was refused because it was already night time, and was advised instead to return the following day. When Segundo Goyala returned the following day, to redeem the property he was told by petitioner that the period to redeem has already expired. Segundo Goyala testified further that he tried no less than three times to redeem the property, but each time petitioner refused the redemption money.

"It appears further that the petitioner is in possession of the land since May 26, 1951, after the execution of Exhibit 'A' up to the present time and had appropriated to himself the products during the period. It is shown further that the land is a productive coconut land and has a fair market value of P5,000.00 with an annual yield of P1,800.00."

"The respondents are not however entitled to be reimbursed of the value of the products obtained by the petitioner who acted in the belief that the agreement was a Pacto de Retro Sale which turned out to be otherwise as the Court now so declares.

"WHEREFORE, in view of the foregoing the Court hereby declares the Deed of Pacto de Retro Sale (Exh. 'A') an equitable mortgage and respondents Segundo Goyala and the heirs of Antonina Almoguera are allowed to redeem the property; orders Faustino Gojo to withdraw the amount of P810.00 deposited with the Clerk of Court in full settlement of the loan, and hereby cancels and declares without force and effect the afore-mentioned Deed of Pacto de Retro Sale executed by the spouses Segundo Goyala and Antonina Almoguera in favor of Faustina Gojo. Without costs."

The above-quoted decision was subsequently amended in an order of December 19, 1963, as follows:

"It appearing that in the dispositive part of the decision there was no directive to restore the possession to the defendants upon execution, the dispositive portion of the said decision is hereby amended to include therein an additional directive ordering the plaintiff to deliver and restore the possession of the land in question to the defendants."

Dissatisfied with the decision referred to, appellant appealed to the Court of Appeals which, upon its finding that the said appeal involves purely questions of law, certified the same to this Court for resolution.

In his brief, appellant assigns the following errors allegedly committed by the trial court:

"1. THE LOWER COURT ERRED IN DECLARING PLAINTIFF IN DEFAULT WITH RESPECT TO DEFENDANT'S COUNTERCLAIM;

"2. THE LOWER COURT ERRED IN DEPUTIZING OR COMMISSIONING THE CLERK OF COURT TO RECEIVE THE EVIDENCE OF THE DEFENDANT SEGUNDO GOYALA;

"3. THE LOWER COURT ERRED IN RENDERING JUDGMENT IN FAVOR OF THE RESPONDENT SEGUNDO GOYALA AND THE HEIRS OF ANTONINA ALMOGUERA ALLOWING THEM TO REDEEM THE LAND IN QUESTION FROM THE PETITIONER FAUSTINO GOJO FOR THE SUM OF P810.00."

The thrust of appellant's argument in respect of the first assignment of error is to the effect that there is no occasion for the trial court to declare him in default in respect of appellee's counterclaim in this case, for the reasons that: (a) the said counterclaim "falls within the category of compulsory counterclaim" which does not call for an independent answer as the complaint already denies its material allegations; and (b) the dismissal of the complaint in this case without prejudice carried with it the dismissal of the said counterclaim.

The first assignment of error of appellant is well taken. It is now settled that a plaintiff who fails or chooses not to answer a compulsory counterclaim may not be declared in default, principally because the issues raised in the counterclaim are deemed automatically joined by the allegations of the complaint.[1] In the instant case, there can be no doubt that appellant's counterclaim was a compulsory one inasmuch as it arises out of or is necessarily connected with transaction or occurrence that is the subject matter of the complaint; the complaint alleged that the right of appellee to repurchase the property in question had already expired and asked for an order of consolidation; on the other hand, appellant's counterclaim was for reformation of the deed claiming that it was only a mortgage. Thus the counterclaim was clearly inconsistent with and directly controverted the whole theory and basic allegations of the complaint. In consequence, appellant's complaint stood as the answer to appellee's counterclaim; hence, the incorrectness of the trial court's order declaring the appellant in default in regard to said counterclaim is evident.

Regarding the dismissal of petitioner's complaint, We hold also, that the trial court committed reversible error in ordering the same. It is true that under Section 3 of Rule 17, a complaint may be dismissed for failure to prosecute if the plaintiff fails to comply with an order of the court, but it is obvious that the said provisions cannot apply when the order supposedly ignored is a void one, as in this case. Here, the trial court ordered petitioner to amend the complaint only because it was informed that one of the defendants had died, the court directing that the plaintiff should name the heirs of the deceased as defendants in lieu of said deceased. Such an order runs counter to the ruling of this Court in *Casenas vs. Rosales, et al.*[2] which is squarely applicable to the situation herein obtaining. In that case, We held:

"When certain of the parties to Civil Case No. 261 died and due notice thereof was given to the trial court, it devolved on the said court to order, not the amendment of the complaint, but the appearance of the legal representatives of the deceased in accordance with the procedure and manner outlined in Rule 3, Section 17 of the Rules of Court, which provide:

'Section 17. Death of party.- After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to

appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs.'

"In the case of *Barrameda vs. Barbara*, 90 Phil. 718, this Court held that an order to amend the complaint, before the proper substitution of parties as directed by the aforementioned rule has been effected, is void and imposes upon the plaintiff no duty to comply therewith to the end that an order dismissing the said complaint, for such non-compliance, would similarly be void. In a subsequent case, *Ferriera, et al. vs. Gonzales, et al.*, G.R. No. L-11567, July 17, 1958, this Court affirmed a similar conclusion on the determination that the continuance of a proceedings during the pendency of which a party thereto dies, without such party having been validly substituted in accordance with the rules, amounts to a 'lack of jurisdiction1. "

"The facts of this case fit four square into the *Barrameda* case above-cited, save for the minor variance that in the former two of the litigants died while only one predeceased the case in *Barrameda*. Here, as in *Barrameda*, during the pendency of (the) civil case, notice was given to the trial court of the deaths of one of the plaintiffs and one of the defendants in it. Instead of ordering the substitution of the deceased's legal representatives in accordance with Rule 3, Sec. 17 of the Rules of Court, the trial court directed the surviving plaintiff to amend the complaint and when the latter failed to comply therewith, the said court dismissed the complaint for such non-compliance. We must hold, therefore, as We did in *Barrameda* that inasmuch as there was no obligation on the part of the plaintiff-appellant herein to amend his complaint in Civil Case No. 261, any such imposition being void, his failure to comply with such an order did not justify the dismissal of his complaint. Grounded as it was upon a void order, the dismissal was itself void." (To the same effect, see *World Wide Insurance & Surety Co. v. Jose, etc., et al.*, 96 Phil. 45, 50).

Besides, in line with the principle underlying Sec. 2 of Rule 17, it is not proper to dismiss a complaint when a compulsory counterclaim has been pleaded by defendant. The reason is obvious. Under the cited provision, the right of the plaintiff to move for the dismissal of an action after the defendant has filed his answer is qualified by the clause providing that: "If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court." With this limitation, the power of the court to dismiss the complaint upon motion of plaintiff, which is usually without prejudice, is not purely discretionary.[3] The purpose is to avoid multiplicity of suits over the same matter which would necessarily entail unnecessary expense and, what is worse, possibility of conflict and inconsistency in the resolution of the same questions. The same considerations would obtain, if the defendant were the one to ask for dismissal. The best interests of justice require that conflicting claims regarding the same matter should be decided in one single proceeding. Dismissing the complaint without prejudice, as the trial court has done in this case, albeit upon motion of the defendant, will not prevent the undesirable multiplication of suits and reventilation of the same issues in the subsequent action that may be filed by virtue of the reservation made in the disputed order of the dismissal.

Having arrived at the foregoing conclusions, it becomes unnecessary to discuss the other two assigned errors.

WHEREFORE, the decision appealed from is set aside and this case is remanded to the court below for further proceedings in consonance with the above opinion, with costs against appellee.

Reyes, J.B.L., Acting CJ., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee and Makasiar, JJ.,

concur.

Villamor, J., took no part.

[1] Navarro and Vinoya vs. Bello, et al., 102 Phil. 1019; Ballecer vs. Bernardo, L-21766, Sept. 30, 1966, 18 SCRA 291, citing Arejola vs. Cayetano, L-6673, Sept. 8, 1954 and Rosario vs. Martinez, L-4473, Sept. 30, 1952. See also, Zambales Colleges, Inc. vs. The Hon. Court of Appeals, et al.. L-16371, March 28, 1961, 1 SCRA 870, 875.

[2] L-18707, Feb. 28, 1967, 19 SCRA 462, 466-467.

[3] World Wide Insurance and Surety Company, Inc. vs. Jose, etc., et al., supra.

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