

**MIGUEL PEREZ RUBIO, PETITIONER, HON. JUDGE HERMINIO MARIANO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH X, OF THE COURT OF FIRST INSTANCE OF RIZAL, ROBERT O. PHILLIPS & SONS, ...**

*G.R. No. L-30404. August 30, 1973*

Ponente: MAKALINTAL, Actg. C.J.

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MAKALINTAL, Actg. C.J.:

The Manufacturers Bank & Trust Company, on one hand, and Robert O. Phillips & Sons, Inc., Robert O. Phillips, Magdalena Ysmael Phillips and Hacienda Benito, Inc., on the other, have filed separate motions for reconsideration of the decision of this Court promulgated on January 31, 1973. All these private respondents pray for the dismissal of the petition, which would be in effect an affirmance of the refusal by the court a quo to admit petitioner's amended and supplemental answer as well as his third-party complaint in Civil Case No. 8632; but the MBTC in particular makes an alternative prayer: that in the event the decision is not totally reconsidered, it be accordingly modified so that:

"(a)

the restraining order be revoked as regards MBTC;

(b)

if this be not feasible, granting (sic) the petitioner a writ of preliminary attachment against the properties of the respondents Phillips only upon the filing of an appropriate bond pursuant to Sec. 4, Rule 57 of the Rules of Court;

(c)

Should this be not again feasible, to grant (sic) petitioner a writ of preliminary attachment against the respondent MBTC upon the filing of a bond by petitioner in favor of MBTC in the amount of P21,252,111.46, the book value of the subject property, to answer for whatever damages the MBTC may sustain by reason of the preliminary attachment, pursuant to Sec. 4, Rule 57 of the Rules of Court;

(d)

If this be not still feasible, by issuing (sic) a writ of preliminary injunction in lieu of a restraining order and requiring the petitioner to post an injunction bond in favor of respondent MBTC in the same amount of P21,252,111.46, the book value of the subject property, to answer for whatever damages the MBTC may

suffer as a result of the preliminary injunction, pursuant to Sec. 4(b), Rule 58, of the Rules of Court."

In seeking reconsideration the MBTC expresses doubts as to the completeness of Our decision, claiming that it has overlooked the following legal propositions raised in its answer, namely: (a) that the questioned order of September 30, 1968 had already become final; (b) that appeal, not certiorari, should have been the appropriate remedy of the petitioner; and (c) that the MBTC may not be impleaded as a third-party defendant because the third-party complaint introduces new and separate controversies into the action. Maintaining further that the decision has erroneously relied on mere allegations of the petition which were directly controverted and disputed by the respondents, and that the finding that the third-party complaint merely "seeks to hold the third-party defendants directly liable to the third-party plaintiff for damages" is factually inaccurate in view of the third-party complaint's added plea to annul the final decision in Civil Case No. 8766, a judicial foreclosure of mortgage case instituted by the MBTC against the properties of Hacienda Benito, Inc., which decision had been rendered by another branch (VIII) of the Court of First Instance of Rizal and not by the branch (X) which issued the orders questioned in this petition for certiorari, the MBTC contends that the basic order dated September 30, 1968 should not have been set aside nor the third-party complaint admitted. The MBTC also points out that assuming that the herein petitioner, by his third-party complaint, merely seeks to recover damages, nonetheless such an action for damages against the Bank does not lie inasmuch as the Bank could not stand liable for contribution, indemnity or subrogation or any other relief in respect of the plaintiffs' claim against defendant and third-party plaintiff Perez Rubio, pursuant to section 12, Rule 6 of the Rules of Court. In any event, the MBTC avers, the admission of the third-party complaint is nothing but an "exercise in futility," because the court a quo (Br. X, Court of First Instance of Rizal) cannot set aside the final judgment in Civil Case No. 8766 rendered by a coordinate branch (VIII) of the same court, and neither may the validity of the said final judgment in Civil Case No. 8766 be collaterally attacked in Civil Case No. 8632. Finally, the MBTC takes issue with the propriety of including it within the scope of the restraining order preventing "respondents from proceeding with the transfer of shares and/or of the assets of Hacienda Benito, Inc. to each other or any other person," arguing that a mere restraining order without bond is improper and unjust in the premises, since the MBTC will be left without adequate recourse to recover damages should the lower court finally decide that the petitioner is not entitled to the relief prayed for by it.

For their part the other movants assail the decision for not considering the issue regarding the timeliness of the filing of the petition-in-chief, "when a consideration of the same is vital to the disposition of the present case and prejudicial to the other issues." These movants also maintain that the certiorari case filed by the petitioner, which appears to be in lieu of appeal, should not have been given due course at all, and that if the present petition were an exception to the general rule that certiorari cannot substitute for an appeal, a more extensive explanation stating the reasons why the instant case should be treated differently should have accompanied the decision. They likewise contend that the dismissal of the present petition could hardly prejudice the petitioner since this Court's decision in *Rubio vs. Reyes*, 23 SCRA 773, allowed petitioner to seek relief in Civil Case No. 8766 or in an entirely separate action, alternatives that he could avail himself of without procedural complications. *Avecilla vs. Yatco et al.* is cited, to wit:[1]

"While under the rules a party may, upon motion, ask the court for leave to alter or amend any pleading, action thereon is addressed to the discretion of the court. The court may grant leave to amend upon such terms as may be just or where in its opinion the circumstances so warrant (section 2, Rule 17). The rule is not mandatory. The rule is further subject to the limitation that, if the amendment is allowed, the cause of action should not be substantially changed, or the theory of the case altered to the prejudice of the other party. Thus, it was held: 'The granting of leave to file amended pleadings is a matter peculiarly within the sound discretion of the trial court. This discretion will not be disturbed on appeal, except in case of an evident abuse thereof. But the rule allowing amendments to pleadings is subject to the general but not inflexible limitation that the cause of action

or theory of the case shall not be altered' (Torres Vda. de Neir vs. Tomacruz, 49 Phil. 913). In the circumstances, we find nothing to show that the lower court has abused its discretion on this matter."

The movants submit that the admission of the amended and supplemental answer filed in the case below would substantially change the cause of action of petitioner as embodied in his counterclaim, for the following reasons:

"a.

That the original counterclaim of the petitioner merely seeks recovery of the sum of P4,250,000.00 from the respondents Phillips spouses;

b. That the petitioner seeks, however, to add to this counterclaim –

(1)

the declaration of the Memorandum Agreement of June 5, 1963 as null and void;

(2)

the declaration of the cession and sale of Hacienda Benito to Manufacturers Bank & Trust Co. as having been made in fraud of creditors; and

(3)

the return of said properties to Hacienda Benito, Inc.;

c.

That the new reliefs would necessarily involve a change of the original counterclaim, which the petitioner could have well ventilated in Civil Case No. 8766 or in a separate action, but definitely not in Civil Case No. 8632, since that would be in contravention of the law of the case as set forth in *Rubio v. Reyes, et al.*, L-24581, May 27, 1968, 23 SCRA 773;"

The movants also submit that the procedural complications attending this case would not have arisen had the petitioner followed the manner indicated in the earlier case of *Rubio vs. Reyes, supra*, by filing the new pleadings in Civil Case No. 8766 or by initiating an entirely new action. In effect these movants would squarely lay the cause of the delay in the early termination of the case at the petitioner's doorstep, particularly in his alleged refusal to follow the law of the case by disregarding the steps outlined in *Rubio vs. Reyes*, by obtaining a couple of restraining orders in separate instances, one in said case and the other in the instant case, and by allowing the order denying admission of his new pleading to become final before assailing the same in the present petition for certiorari.

While We recognize the fact that these movants - the MBTC, the Phillips spouses, the Phillips corporation and the Hacienda Benito, Inc. - did raise in their respective answers the issue as to the propriety of the instant petition for certiorari on the ground that the remedy should have been by appeal within the reglementary period, We considered such issue as a mere technicality which would have accomplished nothing substantial except to deny

to the petitioner the right to litigate the matters he raised in his amended and supplemental answer and in his third-party complaint in Civil Case No. 8632, leaving him, however, the right to do so in an entirely new action. The latter alternative, under the premises, appears to be unreasonably circuitous. As We observed in our decision:

"We do not believe that it would serve the ends of justice or of a prompt dispatch of the controversies and issues involved to affirm the orders herein challenged and cause an entirely new action to be commenced. The main dispute below has been delayed long enough for reasons that can be attributed to the plaintiffs and the third-party defendants. The same policy considerations against multiplicity of suits which prompted this Court in *Balastro, et al. vs. Court of Appeals, et al.*, L-33255, November 29, 1972, to affirm the admission of the third-party complaint therein involved despite a finding of its procedural infirmity, likewise obtain in this case."

Regarding the wisdom or propriety of the admission of the petitioner's new pleadings below, We find nothing in the motions before Us to justify the prayer for reconsideration. The respondents' respective denials of the petitioner's claims in his amended and supplemental answer and third-party complaint can best be ventilated in a full-blown trial on the merits.

In our decision we lifted the restraining order hereinbefore issued insofar as it restrained respondent Judge from proceeding with the hearing of Civil Case No. 8632 of the Court of First Instance of Rizal, Branch X, but maintained it insofar as it restrained the other respondents "from proceeding with the transfer of the shares and/or of the assets of Hacienda Benito, Inc. to each other or to any other person, except in the ordinary course of selling subdivision lots, without prejudice to the judgment that may be rendered by the court a quo in the case." The MBTC claims that the restraining order as maintained will indefinitely impair its liquidity and lending operations due to the freezing of the assets acquired in an extra-judicial foreclosure proceeding. Since the restraining order does not require a bond, the MBTC views it as improper and unjust, pointing out that either a preliminary injunction with an injunction bond or a preliminary attachment could just as effectively serve the purpose of a restraining order, and at the same time afford protection to the MBTC in the event the court below should finally adjudge that the petitioner is not entitled thereto.

We find this point well-taken. Inasmuch as the court below has already been instructed to proceed with the hearing of Civil Case No. 8632, We believe that it should be the proper forum to thresh out the question as to whether or not the private respondents here should continue to be enjoined or restrained during the pendency of the case before it. Consequently, adhering to our course of action in the first *Rubio* case (23 SCRA 773), the order issued herein indefinitely restraining private respondents "from proceeding with the transfer of the shares and/or of the assets of Hacienda Benito, Inc. to each other or to any other person, except in the ordinary course of selling subdivision lots," shall remain subsisting and binding only for a period of thirty (30) days from the date the judgment herein becomes final and is remanded to the lower court, upon the expiration of which period the same shall be deemed automatically lifted or dissolved, without prejudice to herein petitioner's filing with the said court a petition for injunction upon sufficient bond to be fixed by it.

WHEREFORE, with the modification thus indicated, the motions for reconsideration are denied.

Zaldivar, Ruiz Castro, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Fernando, J., took no part.

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[1] 103 Phil. 666.

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