

**MIGUEL MENDIOLA, ET AL., PLAINTIFFS AND APPELLANTS, VS.
RICARDO TANCINCO, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-14107. August 31, 1960*

Ponente: BARRERA, J.

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This is an appeal taken from the order dated July 2, 1955 of the Court of First Instance of Samar (in Civil Case No. 4441), dismissing plaintiffs-appellants' complaint docketed on March 23, 1955 for quo warranto with mandamus, on the stated ground that the same was filed beyond the one-year period from plaintiffs' ouster on January 15, 1954.

On August 16, 1954, Miguel Mendiola and 125 others, filed with the above-mentioned court, a petition for mandamus (docketed as Civil Case No. 4398) against Ricardo Tancinco, District Engineer of Samar, alleging, inter alia, that the latter, on January 15, 1954, "without just cause, due notice, and in violation of law", dismissed plaintiffs from their respective positions in the local office of the Bureau of Public Works, and praying for their reinstatement. To this complaint, defendant Tancinco filed his answer on September 1, 1954. On October 5, 1954, plaintiffs filed a "motion to amend their complaint, in order to include the Provincial Governor of Samar and the Members of the Provincial Board as defendants, which was granted by the court on October 8, 1954.

On October 24, 1954, plaintiffs, this time 156 in number, filed their amended complaint entitled "Quo Warranto with Mandamus" against defendant Tancinco and 26 others, among whom were the Provincial Governor of Samar, the Members of the Provincial Board, and the Director of Public Works. Defendants filed their answer to said amended complaint, alleging, among others, that the same does not allege on its face sufficient cause of action for quo warranto but only for mandamus. On January 8, 1955, the court dismissed the complaint "without prejudice" to the filing of another one, in an order of this tenor:

"There is lack of allegation as to who of the respondents illegally occupy the positions sought by petitioners for the court to determine and to make its order effective. 'When the action is against a person for usurping an office or franchise, the complaint shall set forth the name of the persons who claim to be entitled thereto, if any, with an averment of his right to the same and that the defendant is unlawfully in possession thereof.' (Sec. 7, Rule 68 of the Rules of Court).

"Counsel for petitioners admitted the substantial deficiency of the complaint; and, why such deficiency, he manifested that it was due to the inability of the petitioners to have an access to the records and to ascertain the person occupying the different positions sought by the petitioners. Therefore, counsel moved that he be given time to make necessary verification so that he may be able to again amend the complaint. But he could not assure when he could effect the verification for the alleged reason that the records were not made available to him.

"The complaint was filed on August 16, 1954. The petitioners had already amended their complaint. In quo warranto the most expeditious determination of the matters involved is necessary. Another amendment to the already amended complaint cannot be allowed if the time needed for such amendment cannot be ascertained by

the movant who may file again the case when he has obtained the facts necessary to make his allegations substantial and complete in accordance with section 7, Rule 68 of the Rules of Court.

"Therefore, the case is dismissed without costs and without prejudice of filing another.

"So Ordered."

On January 31, 1955, plaintiffs filed a motion for reconsideration praying that instead of dismissing their complaint, they be permitted to file a second amended complaint in order to comply with the requisites pointed by the court and explaining that due to the refusal of the defendant district engineer who alone had the records, plaintiffs had great difficulty in obtaining the necessary information to ascertain the exact positions held by other defendants. Plaintiffs pleaded that to dismiss the complaint only on that technicality which could be cured by an appropriate amendment, great prejudice would result as a new complaint would necessitate new summons which would mean additional expenses on their part, most of whom are without means. This motion for reconsideration was denied by the court.

On March 23, 1955, the same plaintiffs Miguel Mendiola and 122 others, acting in accordance with the order just quoted, filed with the same court a new complaint for quo warranto with mandamus (docketed as Civil Case No. 4441) against Ricardo Tancinco, District Engineer of Samar, and 117 others, this time with specification of the positions occupied by each, praying, inter alia, that the defendants public officials be ordered to reinstate plaintiffs to their respective positions in the local office of the Bureau of Public Works, and the other defendants, to vacate those positions held by them. To this complaint, some of the defendants filed answers with special defenses, and others, motions to dismiss, on the ground that plaintiffs' action had already prescribed, pursuant to Section 16, Rule 68 of the Rules of Court, there being no sufficient showing that the present case has relation to the previous one. On June 23, 1955, plaintiffs, in their supplemental opposition to the motions to dismiss prayed that they "be permitted to amend their complaint in order that all the issues brought out recently by the defendants may be included therein", principally the relationship between the two cases. On July 2, 1955, the court, instead of giving opportunity to the plaintiffs for the requested amendment, issued an order dismissing the complaint, precisely on the alleged lack of sufficient allegation, as follows:

"ORDER

"The defendants' motion is to dismiss the complaint on the ground that the cause of action has already prescribed.

"The complaint was filed on March 29, 1955. Paragraph 5 of the complaint states that the plaintiffs were ousted from their respective offices on January 15, 1954. From the time of the alleged ouster to the filing of the complaint, more than one year had elapsed. Section 16, Rule 68 of the Rules of Court provides that an action against the defendants for plaintiffs' ouster from office shall be commenced within one year after the cause of such ouster, or the right of plaintiffs to hold office, arose. This period is a 'condition precedent to the existence of the cause of action, and if a complaint is not filed within one year, it cannot prosper although the matter is not set up in the answer or motion to dismiss.' (Moran's Rules of Court, Vol. II, p. 202). In several instances the Supreme Court held that actions of quo warranto filed not within the above period, or out of time, should not be entertained. (Bautista vs. Fajardo, 38 Phil., 624; Lim vs. Yulo, 62 Phil., 161.)

"Counsel for the plaintiffs, in his supplemental arguments contained in his opposition, states that the Civil Case No. 4393 between the same parties was filed on August 16, 1954, that the same was dismissed without prejudice on January 8, 1966; and that it is alleged in the present complaint that the said case is related to the one under consideration.

"We do not find such allegation in the present complaint. The only paragraph of the complaint that makes

mention of Civil Case No. 4398, is paragraph 4 which reads thus:

'That defendants Governor and Members of the Provincial Board of Samar are made so herein, in pursuance of the allegations of defendant District Engineer, appearing in his answer to the complaint in Civil Case No. 4398 of this Court, to the effect that his said co-defendants, intervene in the appointments of provincial employees in his Office and under his control and supervision, by virtue of Republic Act No. 528, and so with the inclusion herein of defendant Director of Public Works as regards the appointment of national employees in the District Engineer's office also.' There is no statement in the complaint to show the relation of that case to the one at bar, the date it was filed, when and how it was dismissed. Such must appear in the complaint in the form of allegation made in a clear and concise language. Such an averment cannot be presumed. For the defendants have the right to know, and so they must have to be informed of the ground on which the plaintiffs' action stands.

"We may, however, take a glance at Civil Case No. 4398 to find if the argument of counsel is tenable. The original complaint has one hundred twenty-six (126) plaintiffs and one (1) defendant. An amended complaint which was admitted on November 10, 1954, has one hundred fifty-three (153) plaintiffs and twenty-seven (27) defendants. The complaint in the present action has one hundred twenty-three (123) plaintiffs and the same number of defendants. The above figures show that the parties are not the same: the 123 plaintiffs in this case may be some of the 153 plaintiffs in Civil Case No. 4398; and the 27 defendants (in Civil Case No. 4398) some of the 123 defendants in the present action. Therefore, ninety-six (96) defendants now were not defendants then. No action will lie against these 96 defendants even if we consider the present case to be a continuation of Civil Case No. 4398, as alleged by counsel for petitioners, for then the action against them has already prescribed.

"For lack of sufficient allegation, we only have now what appears on the face of the complaint: the date when the plaintiffs were removed from their offices (January 15, 1954) and the date when the present action was filed (March 29, 1955). As has been said above, the action was filed not within the one year period allowed by Section 16, Rule 68 of the Rules of Court which is 'a condition precedent to the existence of the cause of action.'

"Being out of time, the petition should not be entertained. It is, therefore, dismissed with costs against the plaintiffs.

"So Ordered."

On July 14, 1955, plaintiffs filed a motion for reconsideration of the foregoing order, reiterating at the same time their offer and prayer for opportunity to amend their complaint in order to clarify, further, the connection of the present case to that dismissed without prejudice. On July 18, 1955, plaintiffs filed an additional memorandum for reconsideration, alleging that even assuming that the relief of quo warranto is definitely dismissed in whole, the relief of mandamus ought to proceed. On July 19, 1955, the court issued an order denying plaintiffs' motion for reconsideration, to wit:

"ORDER

"The complaint is for quo warranto to declare the defendants not entitled to the positions to which the plaintiffs are alleged to be the rightful occupants. It seeks to oust the defendants-occupants; and then a writ issued to the other defendants who have the power to appoint, commanding them to 'reinstate the plaintiffs into their respective positions in the public works'. The petition for mandamus, therefore, is dependent upon the complaint for quo warranto. For the appointing defendants can reinstate the plaintiffs only to vacant positions. One position cannot have two occupants.

"Since the defendant-occupants cannot be ordered to vacate in view of the dismissal of the quo warranto proceedings, a writ of mandamus to command the reinstatement of the plaintiffs, cannot be issued.

"The motion for reconsideration, together with the 'additional memorandum for reconsideration', not being meritorious, are denied.

"So Ordered."

Not satisfied with the foregoing orders of the court, plaintiffs appealed to the Court of Appeals, but said court in its resolution of June 6, 1958, certified the case to us, as it involves questions of law only.

Plaintiffs, in this appeal, claim that the lower court erred (1) in dismissing their complaint on the ground of prescription, and (2) in denying their motion for reconsideration and for permission to amend their complaint.

- The legal provisions applicable to the present case are Section 16, Rule 68 of the Rules of Court and Article 1155 of the New Civil Code, the cause of action having arisen on January 15, 1954, date of plaintiffs' ouster.

Under the first provision, the action for quo warranto must be commenced within one year from the time the cause of such ouster, or the right of the plaintiff to hold office arose. On the other hand, Article 1155 of the New Civil Code provides that "the prescription of actions is interrupted when they are filed before the court."

It is not disputed that plaintiffs, in the instant case, were separated from their respective positions on January 15, 1954. They filed their original action of mandamus, which was later amended to quo warranto with mandamus (Civil Case No. 4398) on August 16, 1954. On January 8, 1955, it was dismissed by the court "without prejudice" to the filing of another one. Plaintiffs filed their subsequent action of quo warranto with mandamus (Civil Case No. 4441), which is now on appeal, on March 29, 1955.

Applying the pertinent law to the facts of the case, we find that the one-year period started to run from January 15, 1954, was interrupted on August 16, 1954, when plaintiffs filed their original action (Civil Case No. 4398) and commenced to run again, upon its dismissal on January 8, 1955. Its running was interrupted anew, upon the filing of their subsequent action (Civil Case No. 4441) on March 29, 1955. From January 15, 1954 to August 16, 1954, is 7 months and 1 day. From January 8, 1955 to March 29, 1955, is 2 months and 21 days. Whether we consider the time consumed during the pendency of the first complaint as merely tolling the running of the prescription such that the same should be deducted from the one-year period, or that the dismissal of the complaint on January 8, 1955 started anew the entire one-year period, it is clear that the present case filed on March 29, 1955, is not barred. Under the first view, only a total of 9 months and 22 days had elapsed; under the second only 2 months and 21 days. The lower court, therefore, erred in dismissing plaintiffs' complaint.

The case of *Peralta, et al. vs. Alipio* (97 Phil., 719) cited by defendants is not applicable to the instant case. In the cited case, we did not apply Article 1155 of the New Civil Code in the determination of the prescriptive period for redemption of the land subject of the controversy, for the reason that "the sale of the land took place on August 1, 1947, or before the New Civil Code came into effect" and, therefore, the statute of limitations applicable was that contained in the Code of Civil Procedure.[1]

We specifically stated:

"It is contended on this appeal that under Article 1946 of the Old Civil Code judicial summons shall not give rite to interruption if the plaintiffs should desist from the complaint, as in this case. In answer to this contention, the appellees invoke Article 1155 of the New Civil Code, providing that the prescription of actions is interrupted when they are filed before the court. Neither contention is correct. As the sale of the land took place before the New Civil Code came into effect, the statute of limitations applicable is that contained in the Code of Civil Procedure (Act 190) (Article 2258, New Civil Code)."

And this Court went on to declare that Act 190 (our statute of limitations before the adoption of the new Civil Code) did not adopt the principle of interruption of the period of limitations. In the case before us, on the other

hand, the cause of action arose on January 15, 1954, or more than 3 years after the effectivity of the New Civil Code^[2] and Article 1155 thereof is therefore applicable.

But defendants argue that the present case (Civil Case No. 4441) is not a continuation of the previous one (Civil Case No. 4398), on the grounds that (1) while the first was an action for mandamus only, the second is for quo warranto with mandamus; (2) the previous case was dismissed, while the present was filed as a new case; (3) there is no allegation in the present case that it is a continuation of the first; and (4) the former complaint had 153 plaintiffs and 27 defendants, while the present case has 123 plaintiffs and 118 defendants.

The contention is unmeritorious. In the first place, the records disclose that both cases are actions for quo warranto with mandamus. Secondly, the present case was filed as a new one precisely because, instead of granting the motion to amend the complaint in the first case as it should have been, the order of January 8, 1955 expressly authorized the filing of another case without objection on the part of the defendants. Thirdly, while there is no sufficient allegation in the present case that it is a continuation of the previous one, the court, is fully aware and should have taken judicial notice of the fact that it is the same case which it dismissed "without prejudice" on January 8, 1955. Lastly, the fact that the present complaint contains a lesser number of plaintiffs and a greater number of defendants than the previous one, does not justify the conclusion that it is not a continuation of said previous case. A casual reading of the names of the parties plaintiffs and defendants in both cases will disclose the fact that they; or at least most of them, are the same. And, granting that the prescriptive period for bringing the action had expired with respect to the 96 additional defendants newly impleaded, the action could still be considered as subsisting as to the 27 defendants who were included as parties defendants in said previous case.

- Plaintiffs, in their motion for reconsideration of July 14, 1955, reiterated their offer and petition to amend their complaint, first made even before the court issued its order of dismissal in the present case, in order precisely to state therein formally and in more details the relation of the previous case to the instant case, the date when said first case was filed, and the date, when, and how it was dismissed. Said motion was, however, denied by the court in its order of July 19, 1955. In our opinion, this was error on the part of the court. It should have allowed the amendment of the complaint, considering that the same was predicated on the holding of the court in its order of July 2, 1955 dismissing the complaint, that the aforementioned matters should have been alleged in the complaint. Amendments to pleadings are favored and should be liberally allowed in the furtherance of justice. (I Moran, Comments on the Rules of Court [1952 Ed.] 382.^[3]) Especially is this true in the instant case where the proposed amendment consisted merely in incorporating facts already known and appearing in the records of the court and indicated in the very complaint itself.

In view of all the foregoing, the order of dismissal appealed from is set aside and the case remanded to the court a quo for further proceedings, consistent herewith. No costs. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Gutierrez David, and Dizon, JJ., concur.

Padilla, J., took no part.

[1] Act No. 190. [2] August 30, 1950.

[3] See also Section 2, Rule 17, Rules of Court.

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