

ROQUE ENERVIDA, PETITIONER VS. LAURO DE LA TORRE AND ROSA DE LA TORRE, RESPONDENTS.

G.R. NO. L-38037. January 28, 1974

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

In this appeal certified by the Court of Appeals to this Court as involving purely a question of law, We affirm the dismissal order dated March 29, 1966, of the Court of First Instance of Davao in its Civil Case No. 3886, entitled "Roque Enervida vs. Lauro de la Torre and Rosa de la Torre," but modify the award of damages by eliminating moral damages.

The dispositive portion of said Order reads as follows:

"Considering the fact that the plaintiff has no cause of action against the defendants and has no legal capacity to sue, and considering further that he is prompted with malice and bad faith in taking this action to Court by alleging false statements in his complaint, this Court hereby orders the dismissal of the case and also order the plaintiff to pay unto the defendants the sum of TWO THOUSAND (P2,000.00) PESOS in concept of actual moral and exemplary damages and also for payment of attorney's fees. If the plaintiff has been guided or advised by any attorney to allege in the complaint the falsities mentioned above, the latter should deserve to be investigated for malpractice and to be weeded out of the profession, if, after due hearing the facts and the law may warrant."

The essential facts that led to the filing of this action as set forth by the Court of Appeals are as follows: Plaintiff-appellant, now petitioner Roque Enervida, filed a complaint against the defendant-spouses Lauro de la Torre and Rosa de la Torre, praying that the deed of sale executed on December 3, 1957, by his deceased father, Ciriaco Enervida, over a parcel of land covered by a Homestead Patent be declared null and void for having been executed within the prohibited period of five years, in violation of the provision of Section 118 of Commonwealth Act 141, otherwise known as the Public Land Law. He further prayed that he be allowed to repurchase said parcel of land for being the legitimate son and sole heir of his deceased father.

In due time, defendants filed their answer, stating among others that the plaintiff has no cause of action against them as his father, Ciriaco Enervida, is still living; that it is not true that plaintiff is the only son of Ciriaco Enervida as he has also other living children, namely, Juan, Filomena, Nieves and Antonio, all surnamed "Enervida"; and that the sale of the property in question did not take place within the prohibited period provided for in Section 118 of the Public Land Law, the sale having taken place on November 20, 1957, although ratified and acknowledged on December 3, 1957, before a Notary Public.

On September 9, 1965, during the pre-trial conference on the case, plaintiff-appellant reiterated what he alleged in his reply to defendants' answer and admitted that his father, Ciriaco Enervida, is still living and that he has four other living brothers and sisters who were not joined as party-plaintiffs. He also admitted that the sale of the land in question actually took place on November 20, 1957, but was formalized only on December 3, 1957. He

likewise admitted the authenticity of a certified true copy of Original Certificate of Title No. P-1744 covering the land in question wherein it is stated that the Homestead Patent No. H-169512 on which the title is based was issued to Ciriaco Enervida way back on November 17, 1952.

In view of plaintiff's admission of the material facts at the pre-trial conference, the defendants spouses were constrained to ask for summary judgment, pursuant to Rule 34, in relation with Section 3, Rule 20 of the Rules of Court, on the ground that there is no genuine issue on the case because with plaintiff's admissions it is evident that the sale in question was not executed within the prohibited five-year period imposed by Section 118 of Commonwealth Act 141. They reasoned out that from November 17, 1952, when the Homestead Patent was issued in favor of the patentee, up to December 3, 1957, when the alleged sale took place, more than five years had already elapsed, so that even if the patentee wanted to exercise his right to repurchase as provided for in Section 119 of the Public Land Law, from November 20, 1957, when the sale actually took place up to December 3, 1962, when plaintiff's complaint was filed he could not do so because the five-year period had already elapsed. Defendants claim that plaintiff has no cause of action against them because the patentee, Ciriaco Enervida, is still living and plaintiff's right to repurchase the homestead of his father could be availed of only when the latter is already dead. Acting upon defendants' motion for summary judgment, the Court a quo issued the now questioned Order of March 29, 1966, dismissing the complaint. Hence the present appeal.

Plaintiff-appellant maintains that the trial court erred:

- In finding that the appellant made untruthful statement of facts and that he failed to correct the alleged falsity regarding the death of his father and that he is the only heir;
- In finding that the appellant lacked the legal capacity to sue because his father is still very much alive and in finding that his father is the only person authorized to bring the action;
- In finding that the sale of the property in question was consummated on November 20, 1957, and in holding that the right to repurchase has expired on November 20, 1962, and so the complaint was filed beyond the time required by law;
- In finding that the appellant has no cause of action and that he acted in bad faith in filing the complaint and in awarding damages and attorney's fees;
- That the lower court erred in not directing reconveyance and in not divesting appellees of their title to the land upon payment of the repurchase price.

Recapitulating the assigned errors, it results that the main issue presented for determination is whether the court a quo committed an error in dismissing the case based on defendants' motion for summary judgment. Sections 2 and 3 of Rule 34 and Section 3 of Rule 20 of the Rules of Court explicitly provide regarding the matter:

"Section 2 - Summary Judgment for defending party - A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at anytime, move with supporting affidavits for a summary judgment in his favor as to all or any part thereof." (Rule 34)

"Section 3 - Motion and proceedings thereon — The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Rule 34)

"Section 3 - Judgment on the pleadings and summary judgment at pre-trial. If at the pre-trial the court finds

that facts exist upon which a judgment on the pleadings or a summary judgment may be made, it may render judgment on the pleadings or a summary judgment as justice may require." (Rule 20)

Summary Judgment should be availed of as an effective method of disposing civil actions where there is no genuine issue as to any material fact. Here it was clearly shown at the pre-trial conference that plaintiff-appellant, now petitioner, virtually admitted that his father, Ciriaco Enervida, the patentee, is still living; that petitioner is not the sole heir as he has other brothers and sisters who were also living, contrary to his allegations in the complaint under oath that he was the sole heir. As the patentee is still living, plaintiff-appellant could not have, on his own right, sought the repurchase of the land as it would be violative of Section 119 of the Public Land Law which reads:

"Section 119 - Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow or legal heirs, within a period of five years from the date of conveyance."

This Court, through then Associate, now Chief Justice, Makalintal, previously ruled that where the vendor is still living, it is he alone who has the right of redemption.[1] It is clear, therefore, that the complaint is without basis and there is no cause of action and the plaintiff-appellant has no legal capacity to sue. On this score alone, the petition should be denied. But the petitioner contends that the sale was made within the prohibitory period, in contravention of Section 118 of the Public Land Law[2], without recalling the fact that during the pre-trial conference he never denied but admitted the fact that the actual sale of the land in question was made on November 20, 1957, albeit formalized only on December 3, 1957. In Soriano et al. vs. Latono, 87 Phil. 757, 760, this Court ruled:

"The formal objection to the deed of sale is of no moment. We agree with the trial Judge that had not this instrument been notarized at all, the same would have been fully effective as between the parties under Art. 1261 of the old civil code in force at the time of the conveyance. All the elements of a valid contract were present: subject matter, capacity and consent of the parties and lawful consideration."

Also to be noted is the fact that appellant did not deny the authenticity of a certified copy of Original Certificate of Title No. P-1744 covering the land in question where it appears that Homestead Patent No. H-169512 was issued to Ciriaco Enervida, appellant's father, way back on November 17, 1952. In this connection, Recido vs. Refaso[3] is pertinent. This Court speaking through then Chief Justice Bengzon in said case said:

"A - Sale by Petra: There is no question that on June 14, 1948, the Refasos bought her one-half share in the homestead. Nevertheless, she now attacks the validity of her conveyance, pointing out to the legal prohibition against sales of homesteads 'from the date of application and for a term of five years from and after the date of issuance of the patent.' To Petra, the law prohibits the sale of the homestead not only during the period between application and issuance of the patent but also during the five years after such issuance. And, she argues, my sale was void because it was made in 1948 before the issuance of the patent in 1949.

Agreeing to her first legal proposition or major premise, the Court of Appeals held, contrary to her contention, that issuance of the patent took place in 1941. And as the sale had been made in 1948-seven years afterwards - it was valid. Said Court explained that the issuance of the patent in this case occurred in 1941, when the Director of Lands signed the order for the issuance of the patent. This opinion, Petra challenged, insisting that the patent had been issued in 1949-not 1941.

Her contention must be overruled in the light of our decision in Tinio vs. Frances, 51 Off. Gaz. 6205, wherein construing this identical prohibition, we ruled that the patent is deemed issued upon promulgation of the order of the Director of Lands for the issuance thereof - in this case 1941."

For the purpose of computing the five-year prohibition against alienation of homesteads, it is to be reiterated and

emphasized that the patent is deemed issued upon promulgation of the order for issuance thereof by the Director of Lands. This being the case, We see no violation of the provisions of either Section 118 or 119 of the Public Land Law committed by herein respondents because even assuming that the sale sought to be nullified was made on December 3, 1957, as claimed by appellant, still the same was made well beyond the five-year period provided by Section 118 of Commonwealth Act 141.

On the strength of the admissions by plaintiff-appellant at the pre-trial conference which the latter never bothered to oppose or deny in a later motion or by counter-affidavits, the order granting summary judgment was indeed proper (*Jugador vs. Vera*).^[4]

Lastly, the plaintiff-appellant assailed the award of damages and attorney's fees by the court a quo to respondents. Article 2208 of the New Civil Code on attorney's fees specifically provides:

"Article 2208 - In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, can not be recovered, except:

xxx xxx xxx

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

xxx xxx xxx

As the case at bar is clearly an unfounded civil action, the respondents may recover attorney's fees. In *Deogracias Malonzo vs. Gregoria Galang*,^[5] this Court, applying the above doctrine, said:

"As to attorney's fees, the award is correct and proper, in view of the finding of the trial court and of the Court of Appeals that petitioner's action against respondents is clearly unfounded, since Article 2208, par. (4), of the New Civil Code authorizes the recovery of attorney's fees 'in case of a clearly unfounded civil action or proceeding against the plaintiff'. This provision applies equally in favor of a defendant under a counterclaim for attorney's fees (as in this case), considering that a counterclaim is a complaint by the defendant against the original plaintiff (*Pongos vs. Hidalgo Enterprises, Inc., et al.*, 84 Phil., 499) wherein the defendant is the plaintiff and the original plaintiff the defendant."

However, with regard to the award of TWO THOUSAND PESOS "in concept of actual, moral and exemplary damages x x x", the same is not proper for it would run counter to the decision of this Court in the case aforesaid where it was ruled:

"Finally, with respect to moral damages, we are inclined to agree with petitioner that these damages are not recoverable herein, notwithstanding the finding of the trial court and the Court of Appeals that his complaint against respondents were clearly unfounded or unreasonable. It will be observed that unlike compensatory or actual damages which are generally recoverable in tort cases as long as there is satisfactory proof thereof (Art. 2202), the Code has chosen to enumerate the cases in which moral damages may be recovered (Art. 2219). A like enumeration is made in regard to the recovery of attorney's fees as an item of damage (Art. 2208). But the two enumerations differ in the case of a clearly unfounded suit, which is expressly mentioned in Art. 2208 (par.4), as justifying an award of attorney's fees, but is not included in the enumeration of Art. 2219 in respect to moral damages. It is true that Art. 2219 also provides that moral damages may be awarded in "analogous cases" to those enumerated, but we do not think the Code intended 'a clearly unfounded civil action or proceedings' to be one of these analogous cases wherein moral damages may be recovered, or it would have expressly mentioned it in Art. 2219, as it did in Art. 2208; or else incorporated Art. 2208 by reference in Art. 2219. Besides, Art. 2219 specifically mentions 'quasi-delicts causing physical injuries', as an instance when moral damages may be allowed, thereby implying that all other quasi-delicts not resulting in physical injuries are excluded (*Strebel vs. Figueras*, 96 Phil., 321), excepting, of course, the special torts referred to in Art. 309, par. 9, Art. 2219) and in Arts. 21, 26, 27, 28, 29, 30, 32, 34 and 35 on the chapter on human relations (par. 10,

Art. 2219).

"Furthermore, while no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court (Art. 2216), it is, nevertheless, essential that the claimant satisfactorily prove the existence of the factual basis of the damage (Art. 2217) and its causal relation to defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer (*Algara vs. Sandejas*, 27 Phil., 284). The trial court and the Court of Appeals both seem to be of the opinion that the mere fact that respondent were sued without any legal foundation entitled them to an award of moral damages, hence they made no definite finding as to what the supposed moral damages suffered consist of. Such a conclusion would make of moral damages a penalty, which they are not, rather than a compensation for actual injury suffered, which they are intended to be. Moral damages, in other words, are not corrective or exemplary damages."

WHEREFORE, the dismissal order is hereby affirmed with the modification that only attorney's fees in the amount of P1,500 are hereby awarded to the respondents. No costs.

Makalintal, C.J., Teehankee, and Muñoz Palma, JJ., concur.

Ruiz Castro and Makasiar, JJ., concur in the result.

[1] *Florentina Umengan vs. Remigio Butacan, et al.* L-16036, February 28, 1963, 7 SCRA, 311, 315.

[2] "Section 118 - Except in favor of the Government or any of its branches, units x x x, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period: x x x."

[3] L-16641, June 24, 1965, 14 SCRA 443, 445.

[4] L-6308, March 30, 1954, 94 Phil. 704, 708.

[5] L-13851, July 27, 1950, 109 Phil. 16, 18-19.

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