

CELESTINA GUMABAY, ASSISTED BY HER HUSBAND, DIOSDADO MABBORANG, PLAINTIFF-APPELLEE, VS. JULIANA BARALIN, SANTIAGO BUNAGAN, LORETO BUNAGAN, BASILIO MAMBA, BALBINO CATABAY, ARCADI...

G.R. No. L-30683. May 31, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This is a litigation over a parcel of cornland with an area of seventeen thousand square meters located at Barrio Tanuru, Enrile, Cagayan assessed in the name of Celestina Gumabay in the sum of three hundred pesos according to Tax Declaration No. 17548-a dated August 24, 1956 (Exh. A). She paid the realty taxes on the said lot for the years 1948 to 1956 (Exh. B and B-1).

On March 3, 1960 Celestina Gumabay sued Juliana Baralin, Santiago Bunagan, Loreto Bunagan, Basilio Mamba, Balbino Catabay, Arcadio Maggay, Lupo Guiyab and Francisco Calimaran in the Court of First Instance of Cagayan to recover possession of the said land.

She alleged that the defendants forcibly entered the land on August 5, 1959. She asked that, being poor and without means to pay the docket fee, she be allowed to sue as a pauper litigant. The lower court allowed her to sue in forma pauperis (11 Record on Appeal).

The defendants moved to dismiss the complaint on the ground that, inasmuch as it alleged a cause of action for forcible entry, which occurred within one year before the complaint was filed, the Court of First Instance had no jurisdiction over the case. It should be filed in the proper inferior court (Sec. 1, Rule 72, 1940 Rules of Court, now sec. 1, Rule 70; secs. 44 and 88, Judiciary Law; Art. 1147 [1], Civil Code).

Without awaiting the resolution of that motion, Celestina Gumabay filed an amended complaint wherein she alleged that the defendants claimed to be the owners of the land. She transformed her forcible entry action into an action to quiet title. A copy of that amended complaint was personally served on defendants' counsel on March 23, 1960 (28 Record on Appeal).

The lower court in its order of March 26, 1960 admitted the amended complaint, ordered the defendants to answer it, and denied the motion to dismiss. However, a copy of that order was sent to the defendants' counsel on March 31, 1960 only by ordinary mail.

Celestina in her motion of May 26, 1960 asked that the defendants be declared in default for not having answered her amended complaint.

The defendants opposed the motion. They denied having received a copy of the court's order denying their motion to dismiss. They prayed that the plaintiff be ordered to serve upon them the amended complaint or that a period be fixed within which they should answer it.

The lower court in its order of June 4, 1960 denied plaintiff's motion and directed the defendants to answer the amended complaint. A copy of that order was served on defendants' counsel by registered mail on June 17, 1960 (32 Record on Appeal).

The defendants did not answer the amended complaint. At plaintiff's instance, the lower court in its order of August 6, 1960 declared them in default and commissioned the clerk of court to receive Celestina Gumabay's evidence.

At the ex parte hearing, Celestina testified that the land in question was donated to her by her father at the time of her marriage; that her father had possessed that land since she was a child (she was forty-eight years old in 1960 when she testified); that the land was cultivated by his tenants, Mateo Luyun and the latter's two sons; that the land was planted to corn and tobacco; that on August 5, 1959 the defendants entered the land and harvested the corn crop over the opposition of her tenants; that the defendants harvested five carts of corn and took four rolls of barbed wire, and that the defendants persisted in working on the land.

The lower court in its decision declared Celestina Gumabay the owner of the land and ordered the defendants to vacate it, restore its possession to her, and to pay her damages in the sum of P620 plus P250 as attorney's fees.

A copy of that decision was received by defendants' counsel on September 6, 1960. On October 5, 1960 defendants' counsel filed a petition for relief praying that the order of default and judgment by default be set aside and that their answer be admitted. They explained that their failure to answer the amended complaint was due to the mistake and neglect of their two lawyers.

They attached to their motion a copy of Tax Declaration No. 18252-a in the name of Lucio Barlin (not a defendant herein) dated September 30, 1957 which refers to a parcel of land with an area of twelve hectares located at Barrio Maddarulug, Enrile (the disputed land is located at Barrio Tanuru and its area is only 1.76 hectares).

The lower court denied the petition for relief. The defendants appealed to the Court of Appeals. That Court in its resolution of June 10, 1969 elevated the case to this Court because the appeal involves only legal issues (CA-G. R. No. 29202-R).

The defendants contend that the lower court erred in not dismissing the original complaint, in admitting the amended complaint, in assuming that it acquired jurisdiction over their persons on the basis of the amended complaint even without service of new summons, in declaring them in default, and in not granting them relief from the judgment by default.

Those contentions cannot be sustained. The original complaint for forcible entry contained the basic prayer "that the plaintiff be declared the absolute owner of the land in question". That relief was retained in the amended complaint. The only difference between the original and amended complaints is that the latter contained the additional allegation that the "defendants are now asserting and claiming title and absolute ownership over the land in question which is adverse and against the interest of the plaintiff".

The plaintiff explained that she had to amend her complaint in order that the "real matter in dispute", which is "the question of ownership", may be "determined in a single proceeding, thereby avoiding multiplicity of suits" (16 Record on Appeal).

We hold that the trial court's order admitting the amended complaint is in consonance with the object of the Rules of Court to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding (Sec. 2, Rule 1).

To dismiss the original complaint and to require the plaintiff to file another action to quiet title would have resulted in a circuitous, dilatory and expensive proceeding which, in the case of a pauper litigant like Celestina Gumabay, should have been avoided, as it was prudently avoided by the trial court.

For the same reasons, defendants' theory that new summons should have been issued for the amended complaint is untenable. The trial court had already acquired jurisdiction over the persons of the defendants when they were served with summons on the basis of the original complaint and when they appeared and filed a motion to dismiss.

They were personally served with a copy of the amended complaint. The trial court ordered them two times to answer that complaint. Under those circumstances, there is no basis for defendants' contention that the trial court should have ordered the issuance of new summons. That would be a supererogation or making a fetish of a technicality. (See *Ong Peng vs. Custodio*, 111 Phil. 382, 385; *Republic vs. Ker & Co., Ltd.*, 64 O.G. 3761, 18 SCRA 207).

The defendants on page 9 of their brief cites the comment of Chief Justice Moran that "if the defendant had already appeared in court in response to the first summons, so that he was already in court when the amended complaint was filed, then ordinary service of that pleading upon him, personally or by mail, would be sufficient, and no new summons need be served upon him". (1 Moran's Comments on the Rules of Court, 1970 Ed., p. 441). That comment shows that defendants' contention is wrong.

Defendants' two lawyers were given plenty of time to answer the amended complaint. Their failure to answer was inexcusable. The answer attached to their petition for relief from judgment does not contain any meritorious defense.

Therefore, to set aside the judgment by default and grant a new trial would be an idle ceremony. There is no probability that defendants' evidence would justify a reversal of the judgment by default (*Vda. de Yulo vs. Chua Chuco*, 87 Phil. 448, 449; *Gonzales vs. Amon*, 98 Phil. 587; *Miranda vs. Legaspi*, 92 Phil. 290, 294; *Baquiran vs. Court of Appeals*, 112 Phil. 764, 771).

WHEREFORE, the lower court's judgment is affirmed with costs against the defendants-appellants.

SO ORDERED.

Fernando, (Chairman), Barredo, and Martin, JJ., concur.

Antonio, J., in the result.

Concepcion, Jr., J., on leave.

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