

JOSE DE BORJA, PETITIONER, VS. FERNANDO JUGO, JUDGE OF FIRST INSTANCE OF RIZAL; QUINTIN DE BORJA, ADMINISTRATOR OF THE INTESTATE ESTATE OF MARCELO DE BORJA; GREGORIO J. DE BORJA...*G. R. No. L-45297. July 16, 1937*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/328ae04c956c/>**DIAZ, J.:**

The petitioner, basing his opinion upon what he deems an abuse of discretion on the part of the respondent judge, which abuse, according to him, consists in having denied his motion filed in civil case No. 4565 for partition of property, entitled "Quintin de Borja, as administrator .of the Intestate estate of Marcelo de Borja, plaintiff, vs. Francisco de Borja et al., defendants," seeking permission to intervene in said case, instituted mandamus proceeding to compel said judge to grant him the permission applied for and to admit his complaint in intervention.

The facts pertinent to the question to be decided are as follows: The petitioner is the son of the respondent Francisco de Borja. On May 11, 1928, Francisco de Borja, Bernardo de Borja and Marcelo de Borja, by instituting land registration case No. 528 of the Province of Rizal, succeeded in having themselves declared, as they in fact were declared, owners of the real property known as ifaeienda de Jakvjala. Two years later, or in 1930, Quintin de Borja, as administrator of the Intestate estate of Marcelo de Borja, instituted civil case No. 4565, for the partition of the property of which said deceased, Francisco de Borja and Bernardo de Borja were undivided owners. On October 29, 1931, the court which tried the case decided it, adjudicating one-third of the property under partition to the respondent Francisco, de Borja. However, in view of the fact that the order of partition failed to specify the areas and boundaries of the portions allotted to each of the three co-owners, the court ordered the survey thereof by some surveyors commissioned for that purpose. To this date, or at least until August 19, 1936, when the petitioner instituted civil case No. 6598 in the Court of First Instance of Rizal, entitled "Jose de Borja, plaintiff, vs. Hermogena Romero, Francisco de Borja, Josef a Tangco, and Crisanto de Borja, defendants," for the recovery of the portions of the Hacienda de Jalajala, which, according to him, had been sold to him by the respondent Francisco de Borja, the survey, which should have been made by the commissioners, as ordered by the court, has not been carried out due to last minute differences arising among the parties. The petitioner had been appearing as attorney for Francisco de Borja in collaboration with Attorneys Sumulong and Lavides, in all incidents of the two cases above-stated (registration case No. 528, commenced long before the month of May, 1928; and civil case No. 4565, brought, in turn, in 1930). On no occasion during the trial of said two cases, or during the period from May, 1928, to August, 1936, did the petitioner show signs of having rights and interest contrary to those of his father, the respondent Francisco de Borja. On the contrary, he made it understood and maintained that he (Francisco de Borja) was the owner of one-third of the Hacienda de Jalajala. Civil case No. 6598, brought by the petitioner for the recovery, as already stated, of the portions of the Hacienda de Jalajala which he claims to have been sold to him by the respondent Francisco de Borja, is still pending decision to date. It appears from the complaint, which gave rise to the case, that the alleged right of the petitioner is based only upon the document attached thereto,

being no other than Annex A-I of Exhibit A, which is a deed of sale purporting to have been signed by Francisco de Borja and the petitioner, two of the paragraphs of which read as follows:

"That on this date, we, my son Jose de Borja and I, have made a liquidation of all his disbursements for the expenses of the Hacienda de Jalajala, which is under my administration. As a result of said liquidation, I remain indebted in the sum of Ten Thousand Nine Hundred Twenty-Three Pesos and Seventy Centavos (P10,923.70). In addition to this sum, I have already received from my said son other sums amounting to Twenty-Nine Thousand Five Hundred Pesos (P29,500). Adding all these sums my indebtedness amounts to Forty Thousand Four Hundred Twenty-Three Pesos and Seventy Centavos (P40,413.70), which amount I acknowledge as my debt because it is the truth.

"That in consideration of said amount of Forty Thousand Four Hundred Twenty-Three Pesos and Seventy Centavos (P40,423.70), and due to the fact that I now find myself unable to manage the entire property representing my share of said Hacienda, for the purpose of not paying said debt, I hereby make an ABSOLUTE SALE to my said son Jose de Borja of my entire share of the said Hacienda de Jalajala described and mentioned by me in the first paragraph of this deed, promising likewise to prosecute the registration proceeding in my name and to defray all the expenses until the title to said property is obtained, and also until partition thereof is made among my coowners and heirs, after obtaining the title thereto. After all these proceedings, then another formal deed will be executed should there be any necessity thereof."

The sworn answer of the respondent Francisco de Borja to the petitioner's complaint, filed in said civil case No. 6598, contains the special defense that the alleged deed of sale (Annex A-I of Exhibit A) upon which the petitioner bases his right of action, is spurious. Said answer states, among other things, the following:

"(a) That the document Annex A is forged, fabricated, spurious and not genuine; that the defendant Francisco de Borja has never sold his right and participation in the Hacienda de Jalajala to the plaintiff; that said defendant has neither signed nor authorized anybody to sign the Annex A or other document of the same nature; that the plaintiff has never advanced or disbursed any sum of money from his own pocket for the administration of the Hacienda de Jalajala; that the defendant Francisco de Borja has not taken any sum of money or any thing of value from the plaintiff, either as loan or in any other concept; that the plaintiff, within the time stated in the complaint, could not have amassed said fabulous amount of P40,423.70 which he claims to have loaned to the defendant Francisco de Borja for the administration of the Hacienda de Jalajala or for any other purpose; and that the plaintiff, from his birth until after the year 1927, had been living under the care and protection of the defendant Francisco de Borja, who had defrayed the expenses for his education."

It will be noted that the facts heretofore stated do not show that the respondent judge has committed an abuse of discretion. In this jurisdiction the right to intervene in an action is not absolute. It depends upon the sound discretion of the court and when there is no evidence that the person who desires to intervene as such has an interest in the subject matter of the litigation, his right thereto should not be recognized (*Joaquin vs. Herrera*, 37 Phil., 705). The fact that the petitioner has brought an action for the recovery of possession against the respondent Francisco de Borja and others and that he has in his possession a document of the nature of Annex A-I of Exhibit A, which was categorically denied by the respondent, characterizing it as spurious, is insufficient to show that his interest to intervene in civil case No. 4565 is legal, clear and positive.

On the other hand, intervention may be permitted only in cases where the intervening party desires to join the plaintiff in claiming what is sought by the claimant, or to unite with the defendant in resisting the claims of the plaintiff, or to demand anything adverse to both the plaintiff and defendant, and in the case under consideration the petitioner joined neither of said parties. Furthermore, such step may be taken only during the trial or hearing of the case and never after judgment had been rendered (*Felismino vs. Gloria*, 47 Phil., 967). When the petitioner filed his motion to intervene (August 19, 1936), more than five years had already elapsed from the time judgment

had been rendered in the case for partition, and the only thing then lacking was some incidental proceedings precisely to give effect to said judgment. For all these considerations, the conclusion that must be arrived at is that the petition filed is without merit. This is so because in order that a person may be compelled, by mandamus, to perform a particular act, it is imperative that the right had for that purpose be clear, not doubtful. The duty the performance of which is demanded, must be as clear as the right itself to demand such performance (Tabigue vs. Duvall, 16 Phil., 324; Gonzalez vs. Board of Pharmacy, 20 Phil, 367; Lamb vs. Phipps, 22 Phil., 456; Walter E. Olsen & Co. vs. Herstein and Rafferty, 32 Phil., 520; Sanson vs. Barrios, 63 Phil., 198). In view of the present status of said action for the recovery of possession (civil case No. 6598), it is still to be determined whether or not the alleged contract of sale between father and son existed, which proves that the alleged right of the petitioner is not clear but doubtful.

Wherefore, the remedy applied for is denied with costs to the petitioner. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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