

PHILIPPINE NATIONAL RAILWAYS, PETITIONER, VS. PILAR POBRE, VICTORINO CUSI AND COURT OF APPEALS (SPECIAL DIVISION OF FIVE JUSTICES CREATED UNDER SPECIAL ORDER NO. 732 DATED FEBRU...

G.R. No. L-27501. April 30, 1971

Ponente: DIZON, J.

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DIZON, J.:

On May 9, 1967, the Philippine National Railways - hereinafter referred to as PNR - filed a petition for mandamus and certiorari (G.R. L-27501) against the Court of Appeals and the spouses Victorino Cusi and Pilar Pobre, praying for judgment as follows:

"WHEREFORE, it is respectfully prayed that –

1. A writ of mandamus be issued by this Honorable Court compelling respondent Court of Appeals to exercise its appellate jurisdiction and to resolve the merits of the petition for mandamus and certiorari in CA-G.R. No. 38906-R of the respondent Court of Appeals and a writ of certiorari issue declaring null and void the Resolutions of the respondent Court of Appeals dated February 28, 1967 and April 6, 1967.

2. Petitioner prays for such other and further relief as may be just and equitable in the premises."

Because our resolution of May 17, 1967 dismissing the PNR[']s petition mistakenly referred to it as "Petition for Review on Certiorari of the Resolution of the Court of Appeals", on July 16 of the same year the PNR filed a motion stating, inter alia, that it had "never filed a petition for review in the above-entitled case" but "an original action for mandamus and certiorari dated May 3, 1967"; that this court had exclusive original jurisdiction to grant the writs therein prayed for because they were to be directed against the the Court of Appeals; that it had no remedy by appeal nor any other plain, speedy and adequate remedy in the ordinary course of the law against the resolutions issued by said court on February 28 and April 16, both of the year 1967, in CA-G.R. No. 38906-R; and prayed that its "original action for mandamus and certiorari, be given due course." As our resolution of dismissal of May 17, 1967 referred, in reality, to the original action for mandamus and certiorari filed by the PNR on May 9 of the same year, We consider its motion of July 16, 1967 as one for the reconsideration of said resolution.

At the outset it must be stated that whether the printed petition filed by the PNR is one for the review on appeal of the resolutions of the Court of Appeals mentioned therein, or a special civil action for mandamus and certiorari against said court and the private respondents named in the petition, makes no substantial difference as far as our resolution of dismissal is concerned, the essence of which is that, upon the allegations made in the aforesaid petition, the same was without merit.

To further clarify matters, We advert to the following facts disclosed by the record:

It appears that in the Court of First Instance of Rizal an action for damages was filed by the spouses Victorino

Cusi and Pilar Pobre against the PNR (Civil Case No. 7948). After the latter had filed its answer, the court, upon motion of the plaintiffs, issued an order dated November 17, 1964 requiring the said defendant to file a third party complaint against the United Housing Corporation mentioned in its answer. As said defendant showed no willingness to file the third party complaint, the plaintiffs filed a motion to compel it to do so. This motion, however, was denied by the court on March 21, 1966 upon the ground that "it is discretionary for a defendant either to file a third party complaint or not against a third person not yet a party to the original action (Annex "C" of the printed petition pages 116-117).

More than one year later, or more specifically, on August 11, 1966, the PNR changed its mind and filed a motion for leave to amend its answer by including therein a third party complaint against the United Housing Corporation (Annex "D" of the printed petition pages 118-119), to which was attached the amended pleading it intended to file. This motion was denied by the court in its order of November 28, 1966 for the reasons stated in the following portion thereof:

"Examining the record of this case, it is shown that since November 17, 1964, upon motion of plaintiffs, defendant was directed to file a third-party complaint against the United Housing Corporation. Defendant failed, however, to comply with said Order and plaintiffs filed again on February 4, 1965 another motion to compel defendant to comply with said Order of November 17, 1964. Again on March 9, 1966, plaintiffs filed another motion to re-compel defendant to implead the United Housing Corporation but notwithstanding these motions defendant consistently refused and failed to file action as indicated.

On the basis of the above and considering that defendant's counsel was given all the opportunity to implead the United Housing Corporation as third-party defendant but failed to do so it is now too late for him to amend his Answer after he allowed more than three years to lapse after the filing of his Answer and plaintiffs have already presented their evidence and rested their case.

We also note that the amendment of the Answer seeks to alter the defense in that the responsibility is shifted to the United Housing Corporation which, however, has not been given the opportunity to cross-examine the witnesses of the plaintiffs it was not brought in as third-party defendant prior to plaintiffs' presentation of evidence.

In the case of *Rodgers vs. Dick* No. L-18220, April 30, 1963, it was held that "pleadings serve to determine the issues of law and/or fact raised by the respective pleaders. Accordingly there must be, and there is a limit as to the time at which a party may amend his own pleading. Amendments may be made, therefore, within the time and under the conditions prescribed in the Rules of Court, generally, before the trial or hearing of the case or issue on the merits. Indeed, otherwise, there would be no way to determine and limit the nature of the evidence to be presented or admitted or of the arguments that the parties may adduce." (italics supplied.)

In the case of *Jai-Alai Corporation vs. Ching Kiat* G. R. No. L-7969 (March 30, 1960) it was also held:

"With respect to plaintiff's other motion to bring the new parties-defendants, we, likewise find that the trial court did not err in denying the same. The Motion was made 5 years after the filing of the complaint and when the trial was already on rebuttal stage. It was also unnecessary since the persons proposed to be brought in were not really indispensable parties."

Premises considered this Court finds the Motion of defendant Philippine National Railways to be without merit and the same is DENIED.

Let this case be set for reception of defendant's evidence on December 15, 16, 1966, January 5, 6 and 12, 1967, all at 9:30 o'clock a.m."

The motion for reconsideration of this order filed by the PNR under date of December 29, 1966 was also denied

by the court in its order of January 12, 1967 in which the following was said:

"x x x this Court finds no justification for setting aside its Order of November 28, 1966, as it believes that the reasons and grounds given by us in the Order of November 28, 1966 more than justify the denial of defendant's Motion to Amend its Answer at this stage of the proceedings. We may state further that unlike other situations, this particular case is unique in that defendant was advised and ordered by the Court at the instance of plaintiffs to implead the United Housing Corporation as a third-party defendant, and notwithstanding our Orders on the matter, defendant refused and thought it best perhaps not to bring in the United Housing Corporation as third-party defendant. x x x."

It is petitioner's contention in the petition for mandamus etc., now before Us that the above-mentioned orders of November 28, 1966 and January 12, 1967 were issued by the Court of First Instance of Rizal with grave abuse of discretion and that, therefore, a writ of certiorari and another of mandamus should be issued for their annulment and to compel said court to admit the amended answer with a counterclaim and third-party complaint mentioned above.

It appears, however, that besides the petition for mandamus and certiorari under consideration (G.R. L-27501), the PNR had previously filed with this court (G.R. L-27123) and with the Court of Appeals (CA-G.R. No. 38906-R), similar petitions for mandamus and certiorari for the same purpose of annulling the aforesaid orders of the Court of First Instance of Rizal and to compel the latter to admit its amended answer with a counterclaim and third-party claim. In this connection, the pleadings before Us show that prior to February 1, 1967 the PNR filed against the same respondents herein a special civil action for mandamus and certiorari docketed in this court as G.R. L-27123 to obtain exactly the same relief prayed for in G.R. L-27501. We dismissed said petition (G.R. L-27123) by our resolution of February 1, 1967. On February 9 of the same year, the PNR filed an amended petition for mandamus and certiorari dated February 6, 1967 just to file almost immediately a motion for its dismissal. Again, on February 28, 1967, the same party filed a motion to withdraw its motion to dismiss. In view of this confusing steps taken by the PNR, this Court issued a resolution on February 29, 1967 to this effect:

"(1) to deny the petitioner's motion of February 9, 1967 'to dismiss the amended petition for mandamus and certiorari dated February 6, 1967; (2) to deny petitioner's motion of February 28, 1967 'to withdraw motion to dismiss' the amended petition for mandamus and certiorari of February 9, 1967; (3) to declare the resolution of this Court of February 1, 1967 dismissing the original petition for certiorari as final; and (4) to furnish the Court of Appeals a copy of this resolution for reference in connection with Case CA-G.R. 38906-R pending in that court, entitled 'Philippine National Railways, petitioner, versus Cecilia Muñoz Palma, et al., Respondents.'"

After We had dismissed the petition for mandamus and certiorari in G.R. L-27123, the PNR went to the Court of Appeals where it filed a similar if not identical petition docketed as CA-G.R. L-38906-R. On February 28, 1967, the Court of Appeals dismissed said petition on two grounds: firstly, that as the action pending before the Court of First Instance of Rizal (Civil Case No. 7948) involved an amount of damages exceeding the maximum amount within the jurisdiction of the Court of Appeals, the writs prayed for were not in aid of its appellate jurisdiction; secondly, because the petitioner had previously filed with the Supreme Court an identical petition which was subsequently dismissed.

It appearing from the foregoing that the PNR, herein petitioner, is raising in the petition for mandamus and certiorari now before Us (G.R. L-27501) one and the same issue for the third time: the first time in G.R. L-27123, and the second before the Court of Appeals in CA-G.R. 38906-R, it is clear that We must deny, as We hereby deny its motion of June 15, 1967 praying that We give due course to its petition.

Our resolution of May 17, 1967 is hereby declared final.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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