

LAMBEETO YNOTORIO AND SANTOS CATALAN, PLAINTIFFS AND APPELEES, VS. CANUTA LIRA, ET AL., DEFENDANTS; JOSEFINO LIRA, VICENTE LIRA, PEPITO LIRA, MANUEL GRINO JR., AND CRIPINA C. VD...

G. R. No. L-16677. November 27, 1964

Ponente: DIZON, J.

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DIZON, J.:

On July 8, 1907 Lambeito Ynotorio and Santos Catalan filed an action in the Court of First Instance of Capiz (Civil Case No. V-2209) against Canuta (now deceased), Joselino Vicente, and Pepito, all surnamed Lira, Crispin Catalan Vda. de Grino and Manuel Grino, Jr. for partition and/or to recover from the hitler the ownership and possession of one-half undivided interests in 141 parcels of land situated in the municipalities of Dumalaa and Sigma, Capiz, in the municipality of Pototan, Iloilo, and in the city of Iloilo, and to recover damages in the total sum of Pl,492,250.00.

Their complaint alleged, in substance, that Lamberto Ynotorio's father Eustaquio, and Santos Catalan's mother, Domingn Ynotorio, (both deceased) were brother and sister, respectively of Felipe Ynotorio who died in 1924 intestata and without issue, survived by his wife, def fenriant Canuta Lira, leaving the Ml parcels of land described in the complaint as their conjugal properties; that Canuta Lira thru fraud and illegal transactiolis, transferred several of said properties to her co-defendants Joselino, Vicente and Pepito, all surnamed Urn, their natural mother, Crispiua Catalan Vda. do Grino, and the altar's son, Manuel Grino, Jr., thus deprivins plaintiffs of thier lawful share in the inheritance of their late uncle, Felipe Ynotorio; that defendants had teen in possession of said properties since the (tenth of Felipe, and had refused to deliver to the plaintiffs their one-half interest therein a3 well as the corresponding produce thereof, despite repeated demands therefor.

Defendants' answer alleged, among other things, that Felipe Ynotorio died leaving a will which was duly probated and wherein Canuta Lira was made universal heir of all the properties left by the decedent; that 80 of the 144 parcels of land described in the complaint belonged exclusively to Canuta who acquired them after the death of her husband, and the remaining 64 parcels were owned by Crispina Catalan Vda. de Grino, having acquired them from her deceased husband, Manuel Grino; that on February 27, 1936, Canuta Lira donated her properties mentioned above to her legally adopted children, Joselino, Vicente and Pepito all surnamed Lira, legitimate children of the spouses Manuel Grino and Crispina Catalan; that defendants and their predecessors-in-interest had been in exclusive and actual possession as owners of all the properties aforesaid for more than seventy years. As affirmative defenses, they further alleged that the complaint stated no cause of action; that, if it did, the same had prescribed, and that plaintiffs had no legal capacity to sue; and, as counterclaim, they sought recovery of the sum of P160.00000 as damages.

Defendants subsequently filed a motion for a preliminary hearing on their affirmative defenses, and a motion to strike out the allegations made in the complaint that no testate nor intestate proceedings had been instituted to

settle the estate of the late Felipe Ynotorio and that the latter left no will, which allegations were, allegedly inconsistent with those in plaintiffs' reply of August 13, 1957. Both motions were denied by the court on the ground that the facts alleged therein would require the presentation of evidence by the parties.

On February 7, 1958, while the case was pending before the lower court, defendant Canuta Lira died, and Arsenio Frial, on behalf of the legal heirs of Felipe Ynotorio, filed a petition with the Court of First Instance of Capiz for letters of administration of the conjugal properties of Felipe Ynotorio and Canuta Lira, including the properties involved in the present case (Special Proceedings No. V-2269). The petition was granted over the opposition interposed by the plaintiffs herein, who appealed to the Court of Appeals. Meanwhile, plaintiffs moved for the dismissal of the present case, without prejudice to their taking such subsequent action or actions as the outcome of said appeal may warrant. Defendants opposed the motion on the ground that their counterclaim for damages contained in the answer cannot remain pending for independent adjudication by the court.

On November 13, 1959, the court issued an order dismissing the case without prejudice, and ruling that the amount which defendants ought to recover in their counter-claim may be the subject of a separate action or may be claimed in Special Proceedings No. L-2269.

The present is an appeal taken by defendants from (1) the order of the lower court of March 20, 1958 denying: (a) their motion for a preliminary hearing on their affirmative defenses; (b) their motion of September 4, 1957 for the striking out of certain allegations made in plaintiffs' reply, etc., and (2) from the lower court's order of November 13, 1959 dismissing the case, without prejudice, and ruling besides that the amount involved in the counterclaim may be the subject of a separate action or a claim filed in Special Proceedings No. 2269;

This appeal, insofar of it refers to the order of the lower court of March 20, 1958 is without merit. The trial court refused to hold a preliminary hearing in connection with the affirmative defenses interposed by appellants in their amended answer—that appellees' complaint did not state a cause of action; that they had no legal capacity to sue; that their causes of action, if any, had prescribed, and that, at any rate, all the questions raised in their complaint were already *res judicata*—upon the ground that there would be need for the parties to present evidence for a proper resolution thereof. This appears to be true and an accurate appreciation of the situation involved. It was obviously the best thing to have the case fully tried on the merits instead of holding merely a preliminary hearing, in order that the trial court may be placed in a position to resolve correctly the questions raised by appellants.

However, we are of the opinion, and so hold, that the lower court erred in dismissing the case, as stated heretofore, over the objection of appellants who claimed that their counterclaim could not remain pending for independent adjudication. Said counterclaim is as follows:

"COUNTERCLAIM"

the defendants allege:

- That the plaintiffs, at the pendency of Special Proceeding No. 1817 of this Honorable Court entitled, 'Estate of the late Felipe Ynotorio', were aware of the institution and pendency of the aforesaid Special Proceedings for the settlement of the estate of the deceased, Felipe Ynotorio, and of the fact that the said deceased left a will naming and instituting the defendants, Canuta Lira, as his universal heirs, and that the said Special Proceeding had been terminated with the settlement of the estate of the deceased and that all the properties of the deceased had been adjudicated by this Honorable Court in favor of the defendant, Canuta Lira, the universal heir of the deceased under the said will, and that the said will was duly probated by this Honorable Court way back on October 1, 1924;
- That prior to the filing of this action, the attorneys for the plaintiffs were duly advised by the undersigned

counsel for the defendants of the judicial settlement of the estate of the deceased Felipe Ynotorio, and of the adjudication by this Honorable Court of all the properties of the said deceased in favor of the defendant, Canuta Lira, by reason of her having been instituted universal heir of the said deceased in his will, and of the fact that the said will of the said deceased had been duly probated by this Honorable Court;

- That notwithstanding all the foregoing, the plaintiffs instituted the present action as a result of which the defendants have been constrained to retain the services of their counsel and incur expenses in connection therewith in the sum of P50,000.00;
- That by reason of the institution of the present action the defendants have incurred and will incur expenses incident to this case which expenses will amount to not less than P10,000.00; and
- That by reason of the institution of the present action, the defendants have been greatly humiliated, their feelings have been gravely wounded, thus suffering moral and sentimental damages in the sum of not less than P100,000.00."

It is clear that the counterclaim stated above is one that arises from, or is necessarily connected with, appellee's own action and cannot remain pending for independent adjudication by the court. We have already held that, in such case, the court may not dismiss the case over the opposition of the defendant (*Belleza vs. Huntington*, 89 Phil., 689, *Froilan vs. Fan Oriental*, etc., September 30, 1954 and *Domingo vs. Santos*, et al., 55 Phil. 361).

Having arrived at the above conclusion, we do not find it necessary to resolve the other merely incidental issues raised in appellants' brief.

WHEREFORE, the orders appealed from are set aside, and this case is remanded to the lower court for further proceedings.

Bautista Angelo, Concepcion, Barrera, Paredes, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

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