

AGUSTIN O. CASEÑAS, PLAINTIFF-APPELLANT, VS. CONCEPCION SANCHEZ VDA. DE ROSALES (SUBSTITUTED BY HER HEIRS), ROMEO S. ROSALES, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-18707. February 28, 1967*

Ponente: REGALA, J.

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This is an appeal from the order of dismissal entered by the Court of First Instance of Agusan in Civil Case No. 780, entitled Agustin Caseñas v. Concepcion Sanchez Vda. de Rosales, et al.

On August 21, 1952, Rodolfo Arañas and Agustin O. Caseñas filed with the Court of First Instance of Agusan, under Civil Case No. 261, a complaint for specific performance and enforcement of their alleged right under a certain deed of sale, and damages against the spouses Jose A. Rosales and Concepcion Sanchez. They alleged that sometime in 1939, Agustin O. Caseñas acquired from Rodolfo Arañas, under a deed of assignment, the latter's rights and interest over a parcel of land covering an area of more or less than 2,273 square meters and designated as Lot. No. 445-A of the Butuan Cadastre No. 84 (Psd 4943); that Rodolfo Arañas, in turn, acquired the said property from the spouses Jose A. Rosales and Concepcion Sanchez under a deed of sale executed on March 18, 1939 under the terms of which, however, the actual transfer of the aforesaid land unto the vendee would be made only on or before February 18, 1941; and that despite the above documented transactions, and despite the arrival of the stipulated period for the execution of the final deed of transfer, the vendors spouses refused to fulfill their obligation to effect such transfer of the said lot to the vendee, Rodolfo Arañas, or his assignee, the herein appellant, Agustin O. Caseñas. Thus, the principal relief prayed for in the above complaint was for an order directing the defendants-spouses to "execute a deed of absolute sale of the property described in the complaint in favor of the assignee, plaintiff Agustin O. Caseñas.

After the defendants spouses had filed their answer to the above complaint, but before trial, the counsel for the plaintiffs gave notice to the trial court that plaintiff Rodolfo Arañas and defendant Jose A. Rosales had both died. In view of the said manifestation, the lower court, in an order dated April 27, 1956, directed the surviving plaintiff, Agustin O. Caseñas, to amend the complaint to effect the necessary substitution of parties thereon. The said surviving plaintiff, however, failed altogether to comply with the aforementioned order of April 27, 1956 to the end that on July 18, 1957, the lower court issued the following order:

"Until this date no amended complaint was filed by the attorney for the plaintiffs. This shows abandonment and lack of interest on the part of the plaintiffs. This being an old case, for failure on the part of the counsel for the plaintiffs to comply with the order of this Court the same is hereby dismissed without pronouncement as to costs."

As no appeal was taken from the above order of dismissal, the same, in due time, became final.

On April 18, 1960, Agustin O. Caseñas, the same plaintiff Caseñas in Civil Case No. 261, filed with the same Court of First Instance of Agusan, under Civil Case No. 780, another complaint against the widow and heirs of the

late Jose A. Rosales "to quiet, and for reconveyance of, title to real property, with damages." This suit referred itself to the very same property litigated under Civil Case No. 261 and as-serted exactly the same allegations as those made in the former complaint, to wit: "that the plaintiff (Agustin O. Caseñas) has acquired the above-described property by purchase from its previous owner, Rodolfo Arañas, now deceased,.....; and said Rodolfo Arañas had in turn acquired the same property by virtue of another deed of sale executed by Jose A. Rosales, now also deceased;" (Par. 3, Complaint) "that under the terms and stipulations of paragraph 2 of the deed of sale (between Rosales and Arañas),..... Jose A. Rosales was to hold title to the land in question in favor of Rodolfo Arañas or the latter's assigns and successors in interest for a period of five (5) years from February 19, 1936, at the expiration of which said Jose A. Rosales was to execute a document convey-ing absolutely the title to the land in question in favor of the aforementioned Rodolfo Arañas or his as-signs and successors in interest" (Par. 9, Complaint); "despite which obligation the defendants refused, even after the expiration of the stipulated period to "con-vey title to the land in question and to execute the corresponding document covering the same." (Par. 12, Complaint) In the premises, the plaintiff prayed for judgment "quieting the title of the plaintiff to the land in question and ordering the defendants to ex-ecute a deed of conveyance of the same in favor of the said plaintiff" plus costs and damages.

To the above complaint, the defendants filed a motion to dismiss on several grounds, namely: res judi-cata prescription, lack of cause of action, failure to include indispensable parties, and that the con-tract subject of the complaint was void ab initio. After the plaintiff had filed his opposition to the above motion, the lower court issued the order under appeal dis-missing the complaint. Of the above grounds, though, the lower court relied alone on the defendants' plea of res judicata, lack of cause of action and prescrip-tion. The material portion of this order of dismissal reads:

"The Court, however, believes that this action is barred by prior judgment. The order of dismissal in Civil Case No. 261 was already final and has the effect of an adjudication upon the merits. The parties in Civil Case No. 261 and in this case are substantially the same; the subject matter is the same and there is identity of cause of action. All the elements of res judicata are therefore present

"Moreover, the complaint states no cause of action if its purpose is to quiet title, because the plaintiff has as yet no title to the land in question. Precisely, this action is brought in order to acquire or secure title by compelling the defendants to execute a deed of sale in favor of the plaintiff. However, this action for specific performance cannot also pros-per because being based upon an agreement in writing it is already barred by prescription as the period of ten years has long expired when the present complaint was filed.

The appeal at bar assails the above determination that Civil Case No. 780 is barred by a prior judgment and by prescription and that the same states no cause of action. It is on these issues, therefore, that this Court shall dispose of this appeal.

We find for the appellant.

When certain of the parties to Civil Case No. 261 died and due notice thereof was given to the trial court, it devolved on the said court to order, not the amendment of the complaint, but the appearance of the legal representatives of the accused in accordance with the proce-dure and manner outline in Rule 3, Section 17 of the Rules of Court, which provides:

"Sec. 17. Death of party. After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal represent-ative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall

immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be re-covered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs."

In the case of *Barrameda v. Barbara*, 90 Phil. 718, this court held that an order to amend the complaint, before the proper substitution of parties as directed by the aforequoted rule has been effected, is void and imposes upon the plaintiff no duty to comply therewith to the end that an order dismissing the said complaint, for such non-compliance would similarly be void. In a subsequent case, *Ferreira et al v. Gonzalez, et al.*, G.R. No. L-11567, July 17, 1958, this court affirmed a similar conclusion on the determination that the continuance of a proceedings during the pendency of which a party thereto dies, without such party having been validly substituted in accordance with the rules, amounts to a "lack of jurisdiction."

The facts of this case fit four squares into the *Barrameda* case abovesited, save for the minor variance that in the former two of the litigants died while only one predeceased the case in *Barrameda*. Here, as in *Barrameda*, during the pendency of civil case, notice was given to the trial court of the deaths of one of the plaintiffs and one of the defendants in it. Instead of ordering the substitution of the deceased is legal representatives in accordance with Rule 3, section 17, of the Rules of Court, the trial court directed the surviving plaintiff to amend the complaint and when the latter failed to comply therewith, the said court dismissed the complaint for such non-compliance. We must hold, therefore, as We did in *Barrameda* that inasmuch as there was no obligation on the part of the plaintiff-appellant herein to amend his complaint in Civil Case No. 261, any such imposition being void, his failure to comply with such an order did not justify the dismissal of his complaint. Grounded as it was upon a void order, the dismissal was itself void.

Consequently, as the dismissal of Civil Case No. 261 was void, it clearly may not be asserted to bar the subsequent prosecution of the same or identical claim.

Finally, We find ourselves unable to share the appellees' view that the appellant's complaint under Civil Case No. 780 failed to state a sufficient cause of action. A cause of action is an act or omission of one party in violation of the legal right or rights of the other (*Ma-ao Sugar Central v. Barrios*, 79 Phil. 666) and both these elements were clearly alleged in the aforesaid complaint.

Insofar as the issue of prescription is concerned, this Court is of the view that it should defer resolution on it until after Civil Case No. 780 shall have been tried on the merits considering that one of the defenses set up by the appellant against the said issue is the existence of a trust relationship over the property in dispute.

IN VIEW OF ALL THE FOREGOING, the order dated January 20, 1961 dismissing Civil Case No. 780 is hereby set aside and the said case is ordered remanded to the court of origin for trial on the merits. Costs against the appellees.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez and Castro, JJ., concur.

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