

LEGASPI OIL CO., INC., PETITIONER, VS. HON. FRANCISCO GERONIMO, AS JUDGE OF COURT OF FIRST INSTANCE OF MANILA, R. J. DEL PAN & CO., INC., AND LIBERATION STEAMSHIP CO., INC., RES...

G.R. No. L-28101. March 31, 1977

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

This is a petition for certiorari and prohibition, with a prayer for the issuance of a writ of preliminary injunction.

On November 5, 1964, R. J. del Pan & Co., Inc., filed[1] a complaint in the City Court of Manila – docketed therein as Civil Case No. 128693 - against the Liberation Steamship Co., Inc., for the recovery of a sum of money for services rendered to the latter. On August 13, 1965, the City Court of Manila rendered a decision in favor of the plaintiff and against the defendant.

The defendant Liberation Steamship Co., Inc. appealed to the Court of First Instance of Manila - docketed therein as Civil Case No. 62830 - and was assigned to Branch XII, presided over by Judge Francisco Geronimo. Thereafter, a trial de novo was held.[2] After the plaintiff R. J. del Pan & Co., Inc. had offered its evidence, the defendant Liberation Steamship Co., Inc. presented its accountant as a witness, who testified that according to a "Booking Agreement" between the Liberation Steamship Co., Inc. and the Legaspi Oil Co., Inc., the latter, as shipper, is liable for the payment of the services subject of the plaintiff's claim.

In view of the testimony of defendant's witness, Judge Francisco Geronimo on August 10, 1967 ordered the plaintiff R. J. del Pan & Co., Inc. to amend its complaint by including the Legaspi Oil Co., Inc. as a defendant.[3] In compliance with the said order, the plaintiff filed, on August 24, 1967, an amended complaint[4] impleading the Legaspi Oil Co., Inc. as a party defendant.

Instead of filing an answer, the Legaspi Oil Co., Inc. filed a motion to dismiss[5] the amended complaint as against it, which Judge Francisco Geronimo, however, denied in his order, dated September 23, 1967.[6]

Without filing a motion to reconsider the aforesaid order, the Legaspi Oil Co., Inc. filed with this Court the instant petition, claiming that respondent Judge Geronimo acted in excess of his jurisdiction and with grave abuse of discretion in denying its motion to dismiss, and that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.

This Court gave due course to the petition, and in due time, the private respondents filed their respective answers. After the parties had submitted their memoranda, the case was deemed submitted for decision.

The principal issue to be resolved in the instant case is whether or not respondent Judge acted in excess of his jurisdiction and with grave abuse of discretion in denying the petitioner's motion to dismiss.

The instant petition is meritorious.

We agree with the petitioner's contention that in case of an appeal from an inferior court to a Court of First Instance, the latter court cannot in the exercise of its appellate jurisdiction bring in a new party for the first time on appeal.

Under Rule 40, Section 7 of the Revised Rules of Court, upon the docketing of the appeal, the pleadings filed in the justice of the peace or municipal court are deemed reproduced in the Court of First Instance. Although the parties may, if they so desire, file amended or new pleadings, nevertheless, they cannot in their amended or new pleadings change the nature of the cause of action and defenses that have been pleaded in the inferior court or add new ones. Thus, as was held by this Court, in cases appealed from an inferior court to a Court of First Instance the parties can neither change the cause of action or defenses they have pleaded in the inferior court nor add new ones in their pleadings even if the case is to be tried de novo.[7]

In the present case, it is to be noted that the only parties in the City Court of Manila were the plaintiff R. J. del Pan & Co., Inc. and the defendant Liberation Steamship Co., Inc. The petitioner Legaspi Oil Co., Inc. was not a party to the case when it was tried and decided by the said court. When the complaint originally filed therein, which is deemed to have been reproduced in the Court of First Instance, was amended by the plaintiff, impleading the petitioner Legaspi Oil Co., Inc. as a party defendant and alleging that either the latter or the defendant Liberation Steamship Co., Inc. is liable for the payment of the services subject of the complaint, it had in effect alleged a new cause of action not set up in the City Court of Manila and changed its theory of the case as tried and decided by the inferior court. Such amendment cannot be done for the first time on appeal in the Court of First Instance of Manila under the aforesaid principle that in cases appealed from an inferior court to a Court of First Instance the parties cannot change the cause of action or defenses they have pleaded in the inferior court, or add new ones.[8] Moreover, when the respondent Judge ordered the plaintiff to amend its complaint, the latter had already rested its case and the defendant had already started presenting its evidence. At that stage of the proceedings, it is no longer proper or advisable to implead the petitioner Legaspi Oil Co., Inc. as a new defendant, which is neither an indispensable party nor even a necessary party insofar as the plaintiff is concerned.

Upon the foregoing, We hold that respondent Judge acted with grave abuse of discretion in ordering the plaintiff to amend its complaint by impleading the petitioner Legaspi Oil Co., Inc. as party defendant and in denying its motion to dismiss the amended complaint as against it.

As to the respondents' contention that certiorari will not lie in the present case because the petitioner failed to file a motion for reconsideration of the order denying its motion to dismiss, it suffices to state that when the questions raised before this Court are the same as those which were squarely raised in and passed upon by the court below -- as in the present case -- the filing of a motion for reconsideration is no longer a prerequisite.[9]

ACCORDINGLY, the writ prayed for is granted and the orders of respondent Judge dated August 10, 1967 and September 23, 1967, are hereby annulled and set aside. No costs.

SO ORDERED.

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

Antonio, J., see concurring opinion.

Aquino, J., no part.

[1] Annex "A ", p. 9, Rollo.

[2] The case was tried before Republic Act No. 6031, which took effect on August 4, 1969, amending Section 45

of the Judiciary Act (Republic Act 269).

[3] Annex "B", p. 12, Rollo.

[4] Annex "C ", p. 13, Rollo.

[5] Annex "D", p. 17, Rollo.

[6] Annex "E", p. 20, Rollo.

[7] Malinao vs. Bocar, et al., 91 Phil. 536.

[8] See also Yu Lay vs. Galmes, 40 Phil. 650, and cases therein cited; Zambales Chromite Mining Co. vs. Robles, L-16182, August 29, 1961, 2 SCRA 1051.

[9] Bache & Co. (Phil.), Inc. vs. Ruiz, et al., L-32409, Feb. 27, 1971, 37 SCRA 823, 836, citing Pajo, etc., et al. vs. Ago, et al., 108 Phil. 905

CONCURRING OPINION

ANTONIO, J.:

I concur. In cases of appeal from the municipal court, the parties cannot allege in their pleadings in the Court of First Instance causes of action or defenses that have not been pleaded in the inferior court. In the case at bar, R. J. del. Pan had no cause of action against petitioner as it was not a party to the "Booking Agreement" between Del Pan and Liberation Steamship and, therefore, inclusion of petitioner as new defendant would in effect involve a change of theory of private respondents.

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