

**SPOUSES, DOMINADOR R. STA. MARIA, JR. AND ERLINDA GIMENO,
PETITIONERS, VS. COURT OF APPEALS; HONORABLE FERNANDO A.
CRUZ, AS PRESIDING JUDGE OF BRANCH XII, COURT OF FIRST
INSTANC...**

G.R. No. L-30602. June 30, 1972

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Review of the decision of the Court of Appeals dismissing the petition for certiorari with preliminary injunction filed by herein petitioners, the spouses Dominador R. Sta. Maria, Jr. and Erlinda Gimeno, seeking to set aside the judgment of the Court of First Instance of Caloocan City, Branch XII, on the counterclaim of the therein defendants (private respondents herein) spouses Alfredo V. Jacinto and Venancia Yuson, interposed in the action filed by the former against the latter for the annulment of extrajudicial foreclosure on a residential lot and house situated at No. 137 Asuncion Street, Morning Breeze Subdivision, Caloocan City, which was docketed as Civil Case No. C-949.

The complaint in the aforesaid civil case alleged that the said lot and house were sold on 2 September 1965 to the Sta. Maria spouses by the Jacinto spouses for the sum of P22,000.00, P14,000.00 of which was paid through the spouses Mariano Lucero and Consuelo Tiburcio, leaving a balance of P8,000.00; that when the payment of the balance fell due on 3 December 1965, the vendors Alfredo Jacinto and Venancia Yuson refused to accept payment and instead they instituted extrajudicial foreclosure proceedings on the property, in which they were the highest bidders in the auction sale; that consequently a certificate of sale for P27,940.00, far in excess of the plaintiffs' obligation and far below the actual market value of the foreclosed property, was executed in their favor by the sheriff of Caloocan City; that defendants were about to consolidate ownership of the property in themselves and dispossess the plaintiffs therefrom.

In their answer to the complaint, the defendants admitted the jurisdictional facts; admitted that on 2 September 1965 they sold to the plaintiffs the residential lot and house: that they extrajudicially foreclosed the property and the sheriff sold them the property and that they are about to consolidate ownership thereof and have the plaintiffs dispossessed. Defendants denied the other allegations and averred that in the contract entered into on 21 August 1965 by plaintiff Dominador Sta. Maria, Jr. and Mariano Lucero, it was stipulated that Lucero agreed to sell to Sta. Maria the property in question for P36,000.00, which sum included the mortgage obligation in the sum of P22,000.00 which Lucero had in favor of Alfredo Jacinto, and which Sta. Maria agreed to pay, while the balance of P14,000.00 was to be paid to Lucero; that defendants were not parties to the said contract and that plaintiffs knew that the Luceros had no further claim on or to the property. The defendants counterclaimed for damages due to the alleged malicious filing of the suit, attorney's fees and for rentals to compensate their having been deprived by the plaintiffs of the use and enjoyment of the property since the execution of the certificate of sale until July, 1967.

The trial court, on 1 March 1967, granted a temporary order restraining the spouses Alfredo Jacinto and Venancio Yuson from consolidating their ownership over, and from dispossessing the plaintiffs from, the property. The case was scheduled for hearing on the preliminary injunction for 25 March 1967 but was postponed to 6 April 1967 and then to 6 July 1967. On 6 July 1967, neither the plaintiffs nor their counsel appeared, and the court denied preliminary injunction and set aside the restraining order. However, on motion of plaintiffs, the court reinstated the restraining order.

When the case was called for pre-trial on 29 December 1967, neither the plaintiffs nor their counsel appeared, despite due notice, and on motion of the defendants' counsel, the court declared the plaintiffs non-suited, dismissed the complaint without prejudice and commissioned the deputy clerk of court to receive the evidence on the counterclaim. Plaintiffs moved to reconsider on the ground, that counsel arrived late for the 29 December 1967 pre-trial due to hemorrhoids and stomach trouble. In an order 4 March 1968, the court reconsidered, and reset the case for hearing on 3 May 1968. On 2 May 1968, the plaintiffs filed a motion for leave of court to admit second amended complaint. Came 3 May 1968. Again neither the plaintiffs nor their counsel appeared, despite due notice. On motion of the defendants, the plaintiffs were again non-suited, the case dismissed without prejudice and the plaintiffs were declared in default on the counterclaim. The defendants adopted the evidence they had previously presented before the deputy clerk of court.

On 11 May 1968, the trial court rendered judgment on the counterclaim, ordering the plaintiffs to pay the defendants P15,000.00 as moral damages, P4,650.00 representing rentals and P5,000.00 as attorney's fees and costs.

On the last day for perfecting an appeal, or on 20 July 1968, the plaintiffs' moved to reconsider, but the motion was denied on 21 September 1968.[1] Since the motion for reconsideration was filed on the last day, the plaintiff, averring that they had no more time to perfect an appeal, filed a petition for certiorari with preliminary injunction with the Court of Appeals, charging the trial court acted with grave abuse of discretion in scheduling the case for initial hearing on 3 May 1968 without a pre-trial having been conducted; for dismissing the case without prejudice and proceeding to hear ex-parte the defendants' counterclaim despite the pendency of a motion for leave of court to admit a second amended complaint; in denying him his day in court by preventing his representative, Virgilio Masangcay, in making his manifestation about the pendency of the said motion for leave during the hearing on 3 May 1968; by considering the evidence on the counterclaim which was presented during the scheduled pre-trial on 29 December 1967, but which did not take place, to be the same evidence to support the second ex-parte hearing on 3 May 1968; and by approving the counterclaim, per the decision on 11 May 1968, considering that the counterclaim depended on the outcome of the plaintiffs' complaint. The petition prayed that the decision be set aside.

On 21 April 1969, the Court of Appeals dismissed the petition.

On 7 July 1969, the petitioners filed in the Supreme Court the present petition for review assigning several errors but which may be consolidated into the issues which are discussed henceforth.[2]

It was no error for the court of origin to hold an ex-parte hearing on 3 May 1968 without a mandatory pre-trial being first had and without first having resolved the motion for leave to admit the second amended complaint. For it was petitioner himself who gave cause for a pre-trial not being had by not appearing on 3 May 1968 and for having the motion for leave to file a second amended complaint filed just one (1) day previous to the hearing, without the 3-day notice to the adverse party required by the Rules. As early as 4 March 1968[3] petitioners knew that the case was set for hearing on 3 May 1968, yet during the intervening time they did not protest against the case being set for hearing instead of a pre-trial; when the day arrived, petitioners absented themselves, the

husband by attending a "cursillo" and the wife by attending to a sick child. The wife's absence could possibly be excused but that of the husband cannot, for he did not have to attend the "cursillo" at the date of the trial already set. Petitioner had announced his intention to file an amended complaint on 20 November 1967 yet actually filed it only on 2 May 1968, just one (1) day before the hearing scheduled two months previously. Being his own lawyer, petitioner Sta. Maria, Jr. ought to have known that after a case is set for hearing, the allowance or refusal of amendments to a pleading depends upon the sound discretion of the court (Section 3, Rule 10, Revised Rules of Court).

Petitioners' failure to protest the setting of the case for hearing, instead of for pre-trial; their attending a "cursillo" in preference to the scheduled hearing; and the filing of a motion for leave to admit a second amended complaint just one (1) day before the hearing, are actuations proving that petitioners were not interested in pursuing the case to an early conclusion, but instead were bent in delaying it. Had petitioner Sta. Maria been present on 3 May 1968, the court could have held a pre-trial even if it had set the case for initial hearing but since petitioner was absent, no pre-trial could be held anyway and it was no error that the court should have proceeded to hear the case on the merits. In *Insurance Company of North America vs. Republic*, L-26794, 15 November 1967,[4] it was held that a pre-trial is unnecessary where the case could not be settled and that the fact that an amended complaint was later filed with leave of court did not, under the circumstances, necessitate another pre-trial.

Also pointed out as error is the hearing of the counterclaim after the plaintiffs were non-suited, the argument being that the issues in the counterclaim are so inseparable with those in the complaint that the former may not be heard unless the latter is also heard. Petitioners misapply the doctrine; first, because in the instant case, the adjudication of the counterclaim does not depend upon the adjudication of the claims made in the complaint, since they were virtually abandoned by the non-appearance of the plaintiffs themselves; and, second, the doctrine invoked is not available to plaintiffs like the petitioners, who prevent or delay the hearing of their own claims and allegations.

The doctrine that the complaint may not be dismissed if the counterclaim cannot be independently adjudicated is not available to, and was not intended for the benefit of, a plaintiff who prevents or delays the prosecution or hearing of his own complaint. Otherwise, the trial of counterclaims would be made to depend upon the maneuvers of the plaintiff, and the rule would offer a premium to vexing or delaying tactics to the prejudice of the counterclaimants. It is in the same spirit that we have ruled that a complaint may not be withdrawn over the opposition of the defendant where the counterclaim is one that arises from, or is necessarily connected with, the plaintiff's action and cannot remain pending for independent adjudication (*Ynotorio vs. Lira*, L-16677, 27 November 1964).[5]

The Court of Appeals had issued on 12 November 1968 a preliminary injunction enjoining the respondents from enforcing the decision of the trial court and from dispossessing the petitioners from the property in question. Copies of the writ were served upon the respondents but this notwithstanding, the petitioners were ejected; hence, they moved to declare the respondents in contempt. The Court of Appeals required the respondents to answer. In the respondents' answer they averred that the ejectment complained of by the petitioners was done by virtue of an alias writ, of execution issued in another case involving different parties entitled "*Josefa L. Vda. de Leon, plaintiff, vs. Bienvenido Domingo, defendant*," docketed as Civil Case No. 6874 of the City Court of Caloocan, and it would seem that the Court of Appeals either deemed the explanation satisfactory or that the contempt charge was not proved, for it took no further action on the charges. It is the prerogative of the Court of Appeals to determine if the preliminary injunction issued by it has been disobeyed. At any rate, since the petition upon which the injunction was issued was ultimately dismissed, the contempt issue has become moot.

The trial court not having committed grave abuse of discretion as charged in rendering the judgment of 11 May

1968 the Court of Appeals was justified in dismissing the petition filed before it on the ground that the proper remedy of petitioners was a timely appeal, and a petition for certiorari cannot take its place.

FOR THE FOREGOING REASONS, the decision of the Court of Appeals under review is hereby affirmed with costs against the petitioners.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Makasiar, and Antonio, JJ., concur.

Barredo, J., took no part.

[1] Petition, Rollo, page 24.

[2] Preliminary injunction was ordered issued on 14 November 1969 (Rollo. page 243).

[3] Annex "1" to Petition.

[4] 21 SCRA 887.

[5] 15 SCRA 369.

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