

PABLO ARCEO, PLAINTIFF-APPELLANT, VS. JOSE OLIVEROS AND RUFINA CABANGON, DEFENDANTS-APPELLEES.*G.R. No. L-38251. January 31, 1985*

Ponente: CUEVAS, J.

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Appeal interposed by plaintiff Pablo Arceo from the decision[1] of the then Court of First Instance of Quezon - Branch IV, dismissing plaintiff's complaint seeking to exercise the right of redemption under Sec. 119 of the Public Land Act (Commonwealth Act No. 141). The defunct Court of Appeals, to which this case was originally appealed, certified the case to Us, since pure questions of law are involved.

On June 27, 1963 plaintiff-appellant Pablo Arceo filed a complaint with the defunct Court of First Instance of Quezon, against defendants-appellees, spouses Jose Oliveros and Rufina Cabangon. In his complaint, Pablo alleged that Sixta Arceo, his sister and co-heir, sold to defendants-appellees on July 10, 1958 at Alabat, Quezon, her undivided interest in the parcel of land they have inherited from their deceased father, Roberto Arceo, for P2,500.00 without his (Pablo's) consent. He further claimed that from the time of the sale up to the present, defendants-appellees have not made any improvement on the land although in peaceful and complete enjoyment of the property. Finally, Pablo averred that being a co-owner and co-heir of said Sixta Arceo, he should be allowed to redeem and repurchase the property subject of the sale in accordance with Section 119 of the Public Land Act, the land being covered by a free patent title.[2]

On July 22, 1963 defendants-appellees moved to dismiss the complaint on the following grounds:

1. Plaintiff has no legal capacity to sue;
2. There is another action pending between the same parties for the same cause;
3. Plaintiff's cause of action is barred by the statute of limitations;
4. The complaint states no cause of action; and
5. The instant action is prosecuted not in the name of the real party in interest.[3]

After the filing of plaintiff's opposition[4] and defendants' reply[5] thereto, the court a quo issued an order denying defendants' motion to dismiss and required them to file their Answer.[6]

In their answer,[7] defendants alleged that Sixta Arceo sold her definite share of one and one-half (1 1/2) hectares of the land subject of the litigation in favor of the defendants for the sum of P2,500.00; that there was already a definite partition of said realty between plaintiff Pablo and his sister Sixta long before the sale; that the conveyance was made only after Pablo manifested his unwillingness and inability to buy the parcel in question, which was first offered to him; and that defendants have introduced numerous improvements on the land in dispute. By way of affirmative defenses, defendants reiterated the grounds set forth and relied upon by them in their motion to dismiss earlier filed.

On June 23, 1965 the parties agreed to submit the case for resolution based on their pleadings, memoranda and documentary evidence.[8]

In a decision rendered on September 7, 1965, the then Court of First Instance of Quezon dismissed plaintiff's complaint.[9] Plaintiff's motion for reconsideration[10] was denied.[11]

Hence, this appeal.

Plaintiff-appellant contends that the court a quo erred -

- "1. In upholding appellees' contention that appellant has no legal capacity to sue;
2. In ruling that, in the case at bar, legal redemption under Articles 1612 and 1614 of the New Civil Code supplements Section 119 of the Public Land Law;
3. In holding that lis pendens lies;
4. In dismissing the complaint; and
5. In rendering the judgment appealed from precisely based on the very grounds previously raised in appellees' motion to dismiss which had been unconditionally passed upon, resolved and denied." [12]

The resolution of the instant appeal, hinges principally on the issue of lis pendens.

Addressing himself to this issue, appellant argues,[13] thus:

"While it may be true that the aforesaid previous Civil Case No. 435-G, and the instant case involve almost the same parties, nevertheless, the rights asserted and the reliefs sought respectively therein are entirely or essentially dissimilar. In consequence thereof, this later case should not have been dismissed, on the ground of the pendency of the stated prior suit. The anterior action is to enforce the alleged sale, while the posterior action is to redeem legally the controverted property. If the first litigation does not prosper and the disputed sale is voided, then this second case will become useless and moot, but in the contrary result, whereby the same sale is upheld, then the legal redemption sought in this subsequent case may lie."

Basis of plaintiff-appellant's submittal is the alleged "analogous case" of Hongkong & Shanghai Bank vs. Aldecoa & Co., 30 Phil. 257, where this Court held that when the former suit is for annulment of mortgage, while the present action is for foreclosure of the same, lis pendens does not lie.[14]

On the other hand, defendants-appellees' exception to plaintiff-appellant's stand on this issue - pendency of action - runs thus -

"x x x in the civil case still pending before the CFI of Quezon, Gumaca Branch, the question of compulsory redemption under Section 119 of the Public Land Act was invoked by Pablo Arceo as defendant therein by way of compulsory counterclaim in his answer whereas the very same issue was asserted in the instant appealed case by way of cause of action by plaintiff-appellant. There was, therefore, merely a change of the position of the parties from plaintiff to defendant and vice-versa in said two civil cases although the existence of the same principal issue remains un-altered." [15]

To substantiate their claim that the issue of compulsory redemption which is plaintiff-appellant's cause of action in this case was also invoked by said Pablo Arceo by way of compulsory counterclaim in a pending case between substantially the same parties, defendants-appellees point to two instances in the amended Answer of January 13, 1964 filed in Civil Case No. 435-G by therein defendant Pablo Arceo, plaintiff-appellant herein.[16]

Under the heading "Compulsory Counterclaim" of said amended Answer, then defendant now plaintiff Pablo Arceo, under paragraph 16 alleged that -

"Defendants by way of compulsory counterclaim unto this Honorable Court respectfully incorporate all the allegations in the foregoing answer and in addition, respectfully manifest: That the property in question is covered by a Free Patent Title, every conveyance of which or any portion of the same shall be subject to repurchase by the applicant, his widow, or legal heirs within the period of five years from the date of the conveyance (Sec. 119, C.A. No. 141, as amended) that it appearing as admitted in par. 11 of the complaint that there was an offer to repurchase the same, but which was refused, so that defendants have offered to repurchase the property within the time allowed by law from the date of the conveyance, which offer was denied, by reason of which unjustifiable refusal defendants suffered to lose damages, actual and compensatory, in the amount equivalent to the fruits of the property from the date of refusal to the time of reconveyance."

And in connection therewith, he prays that judgment issue -

"Ordering the plaintiffs (spouses Jose Oliveros and Rufina Cabangon) to re-sell or reconvey the portion sold to the defendants (Pablo Arceo and Sixta Arceo)." (Underscoring supplied)[17]

From the foregoing, defendants-appellees submit that a finding of *lis pendens* is in order.

We agree.

Pendency of another suit between the same parties to be a ground for dismissal requires: 1) identity of parties or at least such as representing the same interest in both actions; 2) identity of rights asserted and prayed for, the relief being founded on the same facts; and 3) the identity in both cases is such that the judgment which may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[18]

It is not disputed that there is another case, Civil Case No. 435-G, pending between plaintiff-appellant Pablo Arceo and defendants-appellees Jose Oliveros and Rufina Cabangon. That case involves the same parcel of land and similar issues as those in Civil Case No. C-105. In the said case, the Oliveros spouses as plaintiffs, impugn the extrajudicial settlement between Sixta and Pablo wherein the former renounced her right over the disputed lot in favor of the latter and seek to annul the transfer certificate of title issued to Pablo Arceo over the said lot. Said spouses based their action upon a claim of ownership over the land pursuant to a Deed of Absolute Sale[19] whereby Sixta Arceo sold to them her definite or specific share in the homestead she and her brother inherited from their father. In his Answer in the said case (Case No. 435-G) Pablo Arceo, as defendant, sets up by way of counterclaim his right of compulsory redemption over the same lot pursuant to Sec. 119 of the Public Land Act, claiming further that the property has never been partitioned between him and her sister Sixta.

This is exactly what plaintiff-appellant Pablo Arceo seeks to accomplish in Civil Case No. C-105 - to exercise his right of compulsory redemption. In short, in both Civil Case No. 435-G and Civil Case No. C-105, the parties herein are litigating over the same subject matter (the lot inherited by the Arceos from their father) and on the same issues - validity of the sale made by Sixta Arceo to the Oliveros spouses; and Pablo Arceo's right of compulsory redemption under Section 119 of the Public Land Act as a co-heir of his sister Sixta. The only difference being, that in Civil Case No. C-105, Pablo Arceo asserts this right of compulsory redemption as a cause of action in his complaint; whereas, in Case No. 435-G he asserts said claim by way of counterclaim, which makes no difference anyway. For while *lis pendens* is normally interposed as a defense when another case is pending upon the same cause of action between the same parties in two complaints, it may also be interposed even if said claim is set forth by way of a counterclaim since the latter partakes the nature of a complaint by the defendant against the plaintiff.[20] Hence, it has been held[21] that to interpose a cause of action in a counterclaim and again advanced the same in a complaint against the same party, as in the case at bar, would be violative of the rule against splitting a single cause of action which is prohibited by the Rules of Court.[22]

It is precisely for this reason that We cannot give our imprimatur to plaintiff-appellant's contention that "if the first litigation does not prosper and the disputed sale is voided, then this second case will become useless and moot, but in the contrary result whereby the same sale is upheld, then the legal redemption sought in the subsequent case may lie." For even on the assumption that the sale by Sixta in favor of the Oliveros spouses is upheld, still the second case, Civil Case No. C-105, will be useless because plaintiff-appellant is not deprived of litigating against the Oliveros on the issue of his claimed compulsory counterclaim in Civil Case No. 435-G by reason of having set it up in his counterclaim in the said case.

The principle upon which a "plea of another action pending" is sustained is that the latter action is deemed unnecessary and vexatious. We find no circumstances whatsoever that will preclude the applicability of said philosophy to the instant case.

Appellant cites and relies very heavily on the Hongkong & Shanghai Bank vs. Aldecoa & Co. case[23] as authority in support of his submittal. Such reliance is, however, misplaced for the said case grants him no support whatsoever. As correctly stated, the aforecited case involved two actions: one for annulment of mortgage; and the other, for foreclosure of mortgage.

The right to foreclose not having been set-up or pleaded as a counterclaim in the first case no adjudication may be had thereon, hence this pronouncement –

“ x x x x

The former suit is one to annul the mortgages. The present suit is one for the foreclosure of the mortgage. It may be conceded that if the final judgment in the former action is that the mortgages be annulled, such an adjudication will deny the right of the bank to foreclose the mortgages. But will a decree holding them valid prevent the bank from foreclosing them? Most certainly not. In such an event, the judgment would not be a bar to the prosecution of the present action. The rule is not predicated upon such a contingency. It is applicable, between the same parties, only when the judgment to be rendered in the action first instituted will be such that, regardless of which party is successful, it will amount to res judicata against the second action....."[24]

In the instant case, however, the right of compulsory redemption and the validity of the sale by a co-heir are in issue not only in Civil Case No. 435-G but also in Civil Case No. C-105, and both suits are between the same parties asserting identical rights, praying similar reliefs premised essentially on the same facts.

With this finding and conclusion, We find no further necessity in dwelling at length on the other issues raised by the appellant.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

Costs against appellant.

SO ORDERED.

Makasiar, (Chairman), concur in the result. However, if the Gumaca case is still pending, and this matter should be ascertained, this case should be consolidated with the case. Considering the length of time that has transpired, it is necessary to know how the Gumaca case was decided.

Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

Aquino, J., concur in the result.

[1] Civil Case No. C-105.

[2] Pages 2-4, Record on Appeal.

[3] Page 11, Ibid.

[4] Page 24, Ibid.

[5] Page 34, Ibid.

[6] Page 40, Ibid.

[7] Page 41, Ibid.

[8] Page 47, Record on Appeal.

[9] Page 48, Ibid.

[10] Page 55, Ibid.

[11] Page 73, Ibid.

[12] Pages 1-2, Brief for Appellant.

[13] Page 8, Brief for Appellant.

[14] Pages 8-9, Brief for Appellant.

[15] Page 16, Brief for Defendants-Appellees.[16] Pages 16-18, Brief for Defendants-Appellees.[17] No. 2, Prayer.[18]Marapao vs. Mendoza, 119 SCRA 97; Lamis Ents. vs. Lagamon, 108 SCRA 740; Salacup vs. Maddela, Jr., 91 SCRA 275; Surigao Dev. Bank vs. Buslan, 48 SCRA 308; Quimpo vs. de la Victoria, 46 SCRA 139.[19] Page 6, Record on Appeal.

[20] Matela vs. Chua Tay, 5 SCRA 163.

[21] Matela vs. Chua Tay, *ibid*; Ledesma vs. Morales, 47 O.G. Supp. December 1951, p. 382; Berses vs. Villanera, 25 Phil. 473.[22] Section 4, Rule 2, Revised Rules of Court.

[23] 30 Phil. 257.[24] 30 Phil. 275.

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