

LIGAYA MINA, ET AL., PLAINTIFFS AND APPELLANTS, VS. ANTONIO PACSON, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-17828. August 31, 1963*

Ponente: LABRADOR, J.

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This is an appeal from an order of the Court of First Instance of Nueva Ecija, Hon. Felix Makasiar, presiding, in its Civil Case No. 3296, entitled "Ligaya Mina, et al., plaintiffs vs. Crispino Medina, et al., defendants," dismissing the complaint filed in this case. The appellant also appeals against the order denying the motion for reconsideration of the order of dismissal.

The facts necessary to understand the nature of the issues presented in this appeal, as gleaned from the pleadings, may be briefly stated as follows: Plaintiffs Ligaya, Jaime, Silvina, Fausta, Pablo and Miguel, all surnamed Mina, are alleged to be the illegitimate children of the deceased Joaquin Mina with plaintiff Pilar Lazo from 1933-1958, while married to Antonia Pacson. Joaquin Mina died in August, 1958, leaving no descendants nor ascendants except his widow, the defendant herein Antonia Pacson. On April 9, 1958, Joaquin Mina, then still living, executed a deed of absolute sale (Annex "B" to Complaint) of three parcels of land situated in the municipality of Munoz, Nueva Ecija, in favor of the defendants Crispino Medina and Cresencia Mina for the sum of P12,000. On April 15, 1958 again he executed another deed of sale (Annex "C" to Complaint) of 13 parcels of land covered by 12 transfer certificates of title to the same spouses Crispino Medina and Cresencia Mina. Both deeds of sale bear the conformity of his wife Antonia Pacson.

In the complaint filed in the Court of First Instance of Nueva Ecija in the case which originated this appeal, it is alleged that plaintiffs are illegitimate children of the deceased Joaquin Mina begotten by him with Pilar Lazo during the period from 1933 to 1958 while Joaquin Mina was lawfully married to Antonia Pacson; that the plaintiff Pablo Mina is a recognized illegitimate child of the deceased Joaquin Mina; that Joaquin Mina died intestate leaving no ascendants or descendants, except his widow Antonio Pacson; that he left various parcels of land enumerated in the complaint but that on April 9, 1950 the defendants connived and secured from Joaquin Mina, who was ill and did not know what he was doing, the execution of the two deeds of sale without consideration, fictitiously and fraudulently, transferring his properties to the spouses Crispino Medina and Cresencia Mina; and that by reason of said acts, defendants have caused moral anguish, anxiety and embarrassment to plaintiffs, causing them damages amounting to P10,000; that plaintiffs pray that they be declared recognized illegitimate children of the deceased Joaquin Mina, entitled to share in the properties left by him as such illegitimate children; that the deeds of sale, Annexes "B" and "C" be declared fictitious, fraudulent and, therefore, null and void; and that defendants be required to deliver to plaintiffs' possession one-fourth of said properties together with P10,000 for moral damages.

Upon the filing of the complaint the defendants presented a motion to dismiss the complaint on the ground of res judicata, alleging that a similar action had previously been presented as Civil Case No. 3015 in the same court, and by the same parties against Crispino Medina and Cresencia Mina, in which the same allegations of plaintiffs'

status and fraudulent conveyance of the properties to defendants are alleged, together with a prayer for moral damages in the sum of P20,000. It appears, however, that in the complaint filed in said Civil Case No. 3015, no prayer is made for the declaration of the filiation of the plaintiffs in relation or with respect to the deceased Joaquin Mina.

The Motion to dismiss also copied an order of the court issued in said Civil Case No. 3015 which reads as follows:

"Acting on the Motion filed by the defendants on December 22, 1958 for the reconsideration of the order dated December 8, 1958, and considering that the present action is not only for annulment of deeds of sale but also for partition (paragraphs 8 and 11 of the complaint and paragraph 4 of the prayer thereof); that to avoid multiplicity of suits, the complex action to establish filiation and for partition or for recovery of inheritance may be brought in the same case (Lopez vs. Lopez, 68 Phil. 227; Escoval vs. Escoval 87 Phil., 547; 48 Off. Gaz. 615; Edades vs. Edades, 99 Phil. 675); and that Antonia Pacson, the surviving widow and the other intestate heirs of the deceased Joaquin Mina, or necessary parties are not made a party in this case (Briz vs. Briz, 43 Phil. 753), the plaintiffs are hereby directed to amend their complaint within fifteen (15) days from receipt hereof by including as party defendant the surviving widow of the deceased Joaquin Mina and other necessary parties.

"Should the plaintiffs fail to comply with this order, this case will be dismissed."

Lastly, another order of the same court dated February 9, 1959 was quoted, the dispositive part of which reads:

"The fifteen-day period granted to the plaintiffs having elapsed without said order having been complied with, the Court hereby dismisses this case, without pronouncement as to costs."

Opposition to the motion to dismiss was presented on behalf of the plaintiffs by their attorney to which a reply was filed on behalf of the defendants. A rejoinder was also filed after which Judge Genaro Tan Torres, then presiding over the court, sustained the motion to dismiss in an order which reads as follows:

"After a careful consideration of the joint motion to dismiss of defendants Antonia Pacson and the spouses Crispino Medina and Cresencia Mina, dated November 11, 1959, the opposition thereto dated November 24, 1959, and the reply of the defendants to the opposition, dated December 7, 1959, the Court is of the opinion that said motion to dismiss is well taken; hence this case is hereby dismissed without costs.

"Plaintiffs' motion for time to submit rejoinder, dated December 10, 1959, is hereby denied because it will only unnecessarily delay the termination of this case.

"SO ORDERED.

"Cabanatuan City, December 18, 1959."

A motion for the reconsideration of the order of the court dismissing the action having been denied, the plaintiffs in the present case prosecuted this appeal directly to this Court.

As shown above the question to be resolved is whether or not the order dismissing the previous Civil Case No. 3015 bars the present civil action No. 3296 of the Court of First Instance of Nueva Ecija.

In the first error assigned by the appellants in their brief it is argued that the dismissal of the complaint in the previous action was in fact "at the indirect instance of the plaintiffs through inaction or omission." We do not find this claim justified by the facts of the case. The order of the court dismissing the complaint in the first case contains the following warning: "Should the plaintiffs fail to comply with this order, this case will be dismissed." In the face of this express warning given in the court's order the dismissal can not be said to have been "at the

indirect instance of the plaintiffs;" it was in fact caused by plaintiffs' refusal to comply with the express mandate contained in the order of dismissal. The dismissal, therefore, was justified under Rule 30, Section 3 of the Rules of Court, which reads:

"Sec. 3. Failure to prosecute.—When plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."

The above provision of the Rules was invoked in the case of *Garchitorena, et al. vs. De los Santos, et al.*, G.R. No. L-17045, June 30, 1962, wherein this Court held:

"To order an amendment to a complaint within a certain period in order to implead as party plaintiff or defendant one who is not a party to the case lies within the discretion of the Court. And where it appears that the person to be impleaded is an indispensable party, the party to whom such order is directed has no other choice but to comply with it. His refusal or failure to comply with the order is a ground for the dismissal of his complaint pursuant to Section 3, Rule 30, of the Rules of Court. * * *"

Under the second assignment of error it is argued that the dismissal of the previous case was brought about by the negligence, gross or criminal, of plaintiffs' lawyer for which the plaintiffs-appellants should not be made to suffer. The argument is not true to fact. The failure to amend was a result not of the neglect of the lawyer alone but also of the plaintiffs-appellants themselves. Had the plaintiffs taken even an ordinary interest in the result of the action that they had filed, they would have been able to secure information from their lawyer that the case had been dismissed for failure to amend. Upon receipt of such information, plaintiffs could have applied to the court for relief under Rule 38 of the Rules of Court and could have had the complaint amended as directed in the order of dismissal. It is not alone negligence of their counsel, therefore, but of themselves also that the required amendment was not made. But assuming for the sake of argument that the failure was due to the lawyer alone, such failure would not relieve them of the responsibility resulting from the neglect of their lawyer, for the client is bound by the action of his counsel. (*Isaac vs. Mendoza*, G.R. No. L-2830, June 21, 1951; *Vivero vs. Santos, et al.*, 98 Phil., 500; *Fernandez vs. Tan Tiong Tick*, 111 Phil., 773; *Gordulan vs. Gordulan*, G.R. No. 117722, Oct. 9, 1962; *Valerio vs. Sec. of Agriculture*, G.R. No. L-18587, April 23, 1963.)

In the third assignment of error it is claimed that there is no complete identity between the parties in the first case and those in the case at bar. The statement is true because in the previous case *Antonia Pacson* was not included as party-defendant. As a matter of fact the order decided that *Pacson* was to be included as party-defendant. As the latter, therefore, the previous order of dismissal does not bar the present complaint, not only because she was not made a party but also because the issue of filiation of the parties-plaintiffs was not raised in the previous case, although such issue was necessary for the plaintiffs to be able to maintain their right of action. In view of this fact the present action should be considered barred in respect to the action for the annulment of the deeds of sale and as regards the defendants spouses *Crispino Medina* and *Cresencia Mina*; but as to the case for the declaration of the plaintiffs as illegitimate children and heirs of the deceased *Joaquin Mina* this latter case is not barred by the previous action as above explained and may still be prosecuted.

Wherefore, the order of dismissal is hereby modified in the sense that the action for the recognition of the filiation of the plaintiffs should be allowed to continue against the defendant *Antonia Pacson*; but the dismissal of the action for the annulment of the deeds of sale is affirmed. Without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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