

APOLONIO GALOFA, PLAINTIFF-APPELLEE, VS. NEE BON SING, DEFENDANT-APPELLANT.

G.R. No. L-22018. January 17, 1968

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

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

Direct appeal from a judgment on the pleadings in Civil Case No. 145 (Ni. 1737-Sorsogon) of the Court of First Instance of Sorsogon on the issue of whether or not the defendant's answer to the complaint tendered a genuine issue.

The plaintiff-appellee Apolonio Galofa filed a complaint against the defendant-appellant Nee Bon Sing[1] for the recovery of possession of and to quiet title over a certain parcel of land in Sta. Lourdes, Barcelona, Sorsogon, alleging therein the prior ownership and possession of the land by his late father, Francisco Galofa, and its adjudication in favor of the plaintiff in an oral partition among his co-heirs. The complaint alleges further:

"4. That plaintiff however, despite the foregoing, was unable to take actual possession of the above-described property due to an unwarranted adverse claim of rights of ownership and possession by the defendant and/or his tenant or encargado, Abion Pantilone, alleging sale by a certain Fe Nicolas of said property to defendant, which if true, had no right whatsoever to legally dispose the above-described property not being the owner thereof, aside from the fact that the defendant is not allowed under the law to own and possess real properties being an alien, pursuant to the Constitution and/or the Krivenko case:

"x x x x x x x x x;

"x x x x x x x x x;

"9. That as a result thereof, plaintiff was compelled to ventilate this case to court and in so doing has to retain the services of counsel for the contracted amount of no less than P1,500.00 and/or spent or will spend the sum of P500,00 because of this case which could have been avoided had the defendants been more fair and just in his dealings with your plaintiff.

"x x x x x x x x x."

In his answer corresponding to the above-quoted allegations in the complaint, the defendant-appellant Nee Bon Sing manifested as follows:

"3. That the defendant denies the material averments contained in paragraph 4 of the Complaint, the truth being, that the defendant never asserted title of ownership to the property described in the Complaint to anybody, much less to the herein plaintiff in virtue of any deed of conveyance executed in favor of the defendant by one Fe Nicolas, nor claimed any possessory right over the said property, either by himself or through another:

"x x x x x x x x x;

"5. That if in fact the plaintiff had contracted, as alleged in paragraph 8 of the Complaint, the services of

counsel and will spend the amounts therein specified occasioned by the institution of the action, the same is his own personal responsibility, for which reason, defendant denies any part and assumes no liability therefor in any manner whatsoever;

"x x x x x x x x."

Upon motion by the plaintiff that the defendant's answer failed to tender an issue, the lower court rendered judgment on the pleadings, declaring the plaintiff the owner of the property "free from any cloud arising from any assertion of adverse claim or interest whatsoever on the part of the defendant", ordering the defendant to deliver possession of the property to the plaintiff, and to pay attorney's fees and costs.

We find that the lower court committed no reversible error in rendering the appealed judgment.

It is to be noted that, to the plaintiff's allegation of his inability to take actual possession of the parcel of land due to "an unwarranted adverse claim of rights of ownership and possession by the defendant x x x", followed by an allegation of how such claim was exercised, the defendant's denial is as to the materials averments contained in paragraph 4 of the Complaint, x x x" conjoined with his disclaimer of dominical or possessory rights in the manner alleged in the complaint. The defendant's denial is, therefore, a negative pregnant, which is equivalent to an admission.

"A denial in the form of a negative pregnant is an ambiguous pleading, since it cannot be ascertained whether it is the fact or only the qualification that is intended to be denied." (41 Am. Jur. 429)

"Where a fact is alleged with some qualifying or modifying language, and the denial is conjunctive, a 'negative pregnant' exists, and only the qualification or modification is denied, while the fact itself is admitted. Ison v. Ison, 115 SW 2d. 330, 272 Ky. 836." (28 Words & Phrases 314)

As to the plaintiff's allegation of his having contracted a lawyer for a fee, the defendant does not deny the alleged fact; what he denies his liability therefore, which is an issue of law. Since the defendant neither denies nor admits the material allegation about the services of plaintiff's counsel, judgment on the pleadings is proper. (Alemany vs. Sweeney, 3 Phil. 114)

The defendant, however, had specifically denied the plaintiff's allegations in paragraphs 5, 6 and 7 of the complaint. He traversed these allegations in his answer by stating that he "does not possess any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 5, 6 and 7 of the (original) Complaint and therefore, denies the same." But paragraphs 6 and 7 of the Complaint referred to damages, while paragraph 5 of the complaint merely alleged a conclusion that by defendant's acts a cloud over plaintiff's title had been raised) so that the defendant's specific denials served no purpose at all. As to the amount of damages, alleged in paragraph 6 of the complaint (P2,000.00 per agricultural year) and specifically denied by the defendant, as aforesaid, a specific denial is not required by the Rules. (Sec. 1, Rule 9, Rules of Court) At any rate, the appealed judgment did not condemn the defendant-appellant to pay damages.

The defendant should have no complaint about the Court's finding, described in his second assignment of error, that -

"the lower court erred in concluding that the allegations in defendant-appellant's answer to paragraphs 5, 6 and 7 of the complaint are mere general denials and not specific denials under the Rules of Court"

because, aside from what has been previously stated, the plaintiff is barred from recovery of his alleged damages for having prayed for a judgment on the pleadings, as thereby he is deemed to have admitted the truth of the defendant's denial on the alleged damages and to have rested his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. (Bauermann v. Casas, 10 Phil. 386; Evangelista v.

De la Rosa, et al., 76 Phil. 115)

The defendant's motion for reconsideration and/or new trial furnished no justification to the lower court to set aside or re-consider its judgment. Said motion prayed that the defendant be allowed to amend his answer but annexed to it is the defendant's own affidavit (Annex A, Rec. on Appeal, p. 57) reiterating that he had "no real right or interest whatsoever not having been involved in any way with any transaction affecting the title or possession of the same." Definitely, therefore, there was no issue to be tried and the court's denial of the motion was proper. And why should the defendant resist the judgment when he simultaneously asserts that he has no right to the land?

For the foregoing reasons, the appealed judgment is hereby affirmed, with costs against the appellant.

SO ORDERED.

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

[1] Amended later to include one Maria Castro who could not be served with summons and was, presumably, a fictitious person x x x (Defendant-appellant's Brief, p. 2) and one Apion Pantilone, who was dropped and excluded as a party defendant by order of the court dated 15 November 1962.

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