

HON. GUILLERMO E. TORRES, AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH VIII, THE PROVINCIAL SHERIFF OF THE PROVINCE OF RIZAL, JAIME E. LAICO AND LUZ LOS BA...

G.R No. L-25889. January 17, 1973

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal by certiorari to review the decision of the Court of Appeals in CA-G.R. No. 35677-R dated 31 August 1965.

The facts as found by the Court of Appeals are as follows:

On 1 January 1955 the spouses Isidro Sierra and Antonia Magtaas sold a parcel of land to Marta B. Chivi, representing to her that the land was not registered either under the Land Registration Act or under the Spanish Mortgage Law and assuring her that although the land was covered by a pre-war free patent application, the application had not been approved and no patent had been issued. The Sierras made that assurance because Chivi was not willing to buy the land if it was covered by a patent, since it would then be subject to repurchase. They agreed that the purchase price of P10,800.00 was not to be fully paid until the vendors could have the land registered under Act 496.

At the instance of the Sierras, Chivi filed an application for registration of the land in the Court of First Instance of Rizal. While the application was pending Chivi, on 24 May 1958, sold her rights and interests in the land to the herein petitioners-spouses Jaime Laico and Luz Los Banos for P25,647.00, with stipulation that should Chivi fail to secure and transfer title to the Laicos she would return to them twice the amount of the aforesaid purchase price. To induce the Laicos to buy Chivi's rights and interests, the Sierras showed them a petition withdrawing their free patent application. The Laicos thereupon continued with the registration proceeding in substitution of Chivi, who signed a deed of transfer of her rights.

In December 1959 the Laicos discovered, and in January 1960 Chivi learned, that a free patent title had been previously issued to Isidro Sierra as early as 26 February 1932. The Laicos went to see the Sierras, who agreed to execute, as they did execute on January 17, 1960, another deed of sale in favor of the Laicos. The Laicos then withdrew their application for registration and filed instead a petition for the reconstitution of the title issued to Isidro Sierra.

On 14 June 1960, however, the Sierras filed a complaint against Marta B. Chivi, assisted by her husband, and the Laicos in the Court of First Instance of Rizal, docketed as Civil Case No. 6184, praying that they (plaintiffs) be allowed to repurchase the land under the provisions of the Public Land Act. The Chivis and the Laicos filed their answers to the complaint and counterclaimed for damages by reason of the alleged bad faith, misrepresentation and fraudulent acts of the Sierras, as hereinbefore recounted. The Laicos filed a cross-claim against the Chivis for

collection of twice the amount of the price paid under their sales contract for the latter's failure to deliver title to the Laicos, alleging that "the defendants Chivi are/or will be liable on these warranties and conditions should the plaintiffs finally obtain favorable judgment in their favor" (sic).

On 12 March 1964 the Sierras and the Laicos entered into a compromise to amicably settled Civil Case No. 6184 as between themselves, stipulating therein, among other things, that the Laicos were now the absolute owners of the land and that the Sierras had no further right to redeem it; that the Sierras would withdraw their objection to the reconstitution of the patent title and that said title would be transferred in the name of the Laicos, who would pay P10,000.00 to the Sierras; that the Sierras would ask for the dismissal of Civil Case No. 6184 insofar as the Laicos were concerned and would convert their action in the case from one for repurchase to one for collection of the balance of the sales price and of damages against the Chivis; that the Laicos would pursue their cross-claim against the Chivis and in the event they obtained a favorable judgment thereon they would pay to the Sierras one-half (112) of any amount awarded to them in excess of the purchase price of P25,647.00.

The compromise, which was executed without the knowledge of or notice to the Chivis, was approved by the trial court on 12 March 1964. On the same date the court, on joint motion of the Sierras and the Laicos, dismissed with prejudice the complaint in Civil Case No. 6184 insofar as the Laicos were concerned as well as the counterclaim of the Laicos against the Sierras. Chivi was not notified of the dismissal.

The court set the case for pre-trial on 14 July 1964. Despite notice to the Sierras and the Chivis, only cross-claimant Jaime Laico and his counsel appeared, whereupon the court declared the Chivis in default, and allowed Laico to present evidence on the cross-claim before the deputy clerk of court. Counsel for the Chivis filed an urgent motion for reconsideration, explaining why he failed to appear at the pre-trial, but the motion was denied. On 5 February 1965 the court rendered judgment for the Laicos, sentencing the cross-defendants to pay them a total amount of P15,000.00, plus costs, and on 1 April 1965 issued a writ of execution. Pursuant to the writ the sheriff levied upon the properties of the Chivis and issued a notice that the properties would be sold at public auction on 14 April 1965.

In due time the Chivis filed with the Court of Appeals a petition for certiorari and prohibition with preliminary injunction to annul: (1) the order of the trial court authorizing the Laicos to adduce evidence ex-parte on their cross-claim against Marta B. Chivi; (2) the decision rendered on said cross-claim; and (3) the order directing the issuance of a writ of execution, the levy on execution, and the notice of execution sale of the properties of Chivi. Chivi prayed further that the therein respondents be prohibited from conducting any further proceedings in said Civil Case No. 6184 on the ground that the trial court was without jurisdiction in the premises.

Upon giving due course to the petition the Court of Appeals issued a writ of preliminary injunction, restraining the therein respondents from proceeding with the execution and with the sale at public auction set for 14 April 1965, until further order.

On 31 August 1965 the Court of Appeals rendered a decision declaring null and void all the proceedings on the cross-claim of the spouses Laico against Chivi, as well as the orders, decisions, writs and processes issued in connection therewith, and restraining the therein respondents Judge and sheriff of the Court of First Instance of Rizal from further proceeding in Civil Case No. 6184. The Laicos moved for reconsideration. Pending resolution of the motion for reconsideration, Marta B. Chivi died and was substituted by Angelina Chivi. In an order dated 16 March 1966, the motion for reconsideration was denied. Hence, the instant appeal by certiorari brought by the Laicos.

The principal issue in this case is: Could the cross-claim in this particular action stand after the complaint in the same action was dismissed with prejudice?

In the resolution of this issue the following considerations are pertinent:

(1) A cross-claim, as defined in Section 7 of Rule 6, is "any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein."

(2) The cross-claim of the Laicos against the Chivis was for the recovery of the sum of P51,294.00, upon the allegations that according to the contract of sale between them, "should the defendants Chivi fail to transfer the title to the land in question to the VENDEE (defendant Laico) then the former shall return to the latter (the aforesaid sum) which is double the amount of the purchase price received by the defendants Chivi"; and that "the defendants Chivi are/or will be liable on these warranties and conditions should the plaintiffs (Sierras) finally obtain favorable judgment in their favor" (sic).

(3) When Marta B. Chivi sold her "rights and interests" to the land in question to Hie Laicos on 24 May 1958 the latter knew that Chivi had yet no registered title, and in fact substituted her in the registration proceeding which she had initiated.

(4) In their counterclaim for damages against the Sierras in Civil Case No. 6184, the Laicos alleged that the "plaintiffs, in fraudulently misrepresenting to the defendants Chivi, as well as to the defendants Laico, that the land in question is unregistered and is not covered by a patent, thereby inducing the latter to purchase the land in question, which they would not have done had they known that the land is covered by a patent, should be adjudged to pay..."

(5) The warranty undertaken by Marta B. Chivi, judging by its terms and by the surrounding circumstances, was in respect of the transfer of ownership — not of the registered title — to the Laicos. The action filed by the Sierras was not for recovery of such ownership but for the exercise of their alleged right of repurchase under the Public Land Act on the ground that the land they had sold was covered by a patent title. In other words the filing of the action did not militate against the warranty to transfer title, for the very fact that the plaintiffs wished to enforce their alleged right of repurchase was predicated on the assumption that the title, that is, ownership, had been effectively transferred first to Chivi and subsequently by the latter to the Laicos.

(6) In any event, even viewing the situation in the light most favorable to the Laicos, their cross-claim on Chivi's warranty to deliver title to them was so inextricably linked with and so utterly dependent upon the success of the complaint of the Sierras for the repurchase of the land that when the complaint was dismissed the cross-claim could not possibly survive. For as the cross-claimants themselves alleged, the cross-defendants would be liable on the warranty "should the plaintiffs finally obtain favorable judgment in their favor" (sic). The warranty became functus officio after the Sierras, who turned out after all to have a free patent title to the land issued way back in 1932, agreed to transfer and did transfer said title to the Laicos — first by the deed of sale executed directly in their favor by the Sierras on January 17, 1960, and again in the amicable settlement of the case between them. The fact that the Laicos paid P10,000.00 to the Sierras in that amicable settlement created no liability on the part of the Chivis: first, because the latter neither knew nor consented to such settlement; second, because the Laicos had already acquired the land directly from the Sierras by virtue of the aforesaid sale of January 17, 1960; and third, because the said sum of P10,000.00 was not the subject of the cross-claim against them.

Appropos is the following statement of the legal principle:

"A cross-bill, strictly speaking is one brought by a defendant in an equity suit against x x x other defendants in the same suit, touching the matters in question in the original bill. It is considered as an auxiliary suit dependent upon the original bill, and can be sustained only on matters growing out of the original bill. There is a well-defined distinction between a cross-bill merely defensive in character, and one seeking affirmative relief. The dismissal of the original bill carries with it a purely defensive cross-bill but not one seeking

affirmative relief." [1]

The cross-claim in this case was purely defensive in nature. It arose entirely out of the complaint and could prosper only if the plaintiffs succeeded. Hence, under the principle above enunciated, it could not be the subject of independent adjudication once it lost the nexus upon which its life depended.

Under the circumstances above set forth the dismissal of the cross-claim should have followed the dismissal of the complaint as a matter of course, without further proceeding; and in setting the said cross-claim for pre-trial and receiving evidence thereon and then rendering judgment against the cross-defendants the court committed such a grave abuse of discretion amounting to lack of jurisdiction correctible by certiorari.

Concerning the argument that the respondents here were guilty of laches because they filed their petition for certiorari after the lapse over 9 months from the time the judgment of the Court of First Instance was rendered, respondent Court of Appeals ruled — in our opinion correctly — as follows:

"x x x

x x x

x x x

"To the contention that the petitioners' action is barred by laches, we are bound to disagree. The judgment by default was rendered on February 5, 1965. It is not known when the petitioners received copy of this judgment, but the fact is that on April 13, or after the lapse of only 2 months and 7 days from the rendition of the judgment, the petition for certiorari was filed with this Court. Principally, the petition assails the decision and the writ of execution thereof which was issued on April 1. Assuming that the decision complained of was actually received by the petitioners on the date it was rendered, the intervening period to the filing of the petition is only 2 months and 7 days, which is shorter than the shortest period of 2 months and 26 days cited in the respondents' ex-parte motion for reconsideration in support of their theory of laches. And a mere 12 days intervened between the issuance of the writ of execution and the filing of the petition for certiorari.

"x x x

x x x

x x x."

Parenthetically, this Court would like to state that Judge Guillermo Torres should not have been made to appear as active party-petitioner in this case, his participation having become *functus officio* after he rendered judgment, and therefore his role being purely nominal in this petition.

In view of the foregoing considerations, the judgment of the Court of Appeals is affirmed, without pronouncement as to costs.

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

[1] *Osius vs. Barton*, 88 A.L.R. 394, 402.

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