

THE HEIRS OF JULIANA CLAVANO, REPRESENTED BY FELICITACION C. DUMA-LAGAN, CESAR C. DUMALA-GAN, ANECITO D. DUMALAGAN, EMIGDIO SORIA, JUANITO J. TAGABUCBA AND ANECITA T. DUMALAGAN,...

G.R. No. L-45837. October 28, 1977

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

This is a petition for certiorari and prohibition to annul and set aside the decision of the respondent Judge, dated January 20, 1977, dismissing the petitioners' complaint for lack of a cause of action, and to enjoin the respondent Judge from trying and deciding Civil Case No. 3055 of the Court of First Instance of Misamis Occidental, Branch I.

On September 28, 1970, the petitioners filed with the Court of First Instance of Misamis Occidental, Branch I, an action for the reformation and rescission of a lease contract against the private respondent Lee Gee & Co., and David Ang Militante, docketed therein as Civil Case No. 2791.[1] In due time, the trial court rendered a decision against the petitioners and in favor of the private respondent and David Ang Militante, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing plaintiffs' complaint and further declaring the lease contract dated April 11, 1958, Appendix "A" to the plaintiffs' complaint dated September 28, 1970 herein above quoted, as having been duly and validly executed by and between the parties thereto; that the terms and conditions therein incorporated are very clear leaving no room for further interpretation or construction by this Court; sentencing plaintiffs to pay defendants the amount of P1,000.00 as attorney's fees, the instant action having been filed just to harass the defendants.

"Costs against the plaintiff."[2]

Not satisfied with the above decision, the petitioners appealed to the Court of Appeals, which appeal is still pending with the said appellate court.[3]

Thereafter, on September 2, 1974, the petitioners filed another complaint[4] against the private respondent Lee Gee & Co., for recovery of ownership and possession of the land subject matter of the lease contract in Civil Case No. 2791, and was docketed therein as Civil Case No. 3055.

The private respondent moved to dismiss[5] the complaint on the following grounds: (1) that the cause of action is barred by a prior judgment; and (2) there is another action pending between the same parties and for the same cause, which the petitioner opposed.[6]

In the meantime, the petitioners filed a motion for inhibition,[7] alleging that respondent Judge should inhibit himself from hearing, trying and deciding Civil Case No. 3055 because of his ruling, decision and/or comment in Civil Case No. 2791. The same, however, was denied by respondent Judge in his order,[8] dated December 10,

1974.

Acting upon the motion to dismiss and the opposition thereto, the respondent Judge issued, on October 23, 1974, an order[9] denying the private respondent's motion to dis-miss in the following tenor:

"The grounds of the Motion to Dis-miss dated September 30, 1974, filed by the defendant thru counsel, not being indubitable but evidentiary, it appearing that the land subject matter of the instant complaint is not identical with the land subject matter of Civil Case No. 2791, the same is hereby denied."

Thereafter, the private respondent filed its answer,[10] admitting some allegations and denying the other allegations of the complaint, and by way of special affirmative defenses alleged that the petitioners have no cause of action, and that there is a pending action between the petitioners and the private respondent, involving the same subject matter.

The issues having been joined, the case was set for pre-trial on October 6, 1975. At the said hearing, the private respondent, thru counsel, manifested that it would file a motion to dismiss the complaint on the grounds alleged in its affirmative defenses, and at the same time, moved orally for a preliminary hearing on its affirmative defenses, which the respondent Judge granted, over the objection of the petitioner.[11]

At the hearing on December 9, 1975, the petitioners presented a written motion for reconsideration[12] of the order of respondent Judge granting private respondent a preliminary hearing on its affirmative defenses, alleging that since private respondent did not include in its motion to dismiss, the ground of lack of cause of action, the same had been waived under the rule on omnibus motion, while the second ground, that is, pendency of another action between the same parties for the same cause, had already been resolved by respondent Judge when he denied the private respondent's motion to dismiss; hence, both grounds of a motion to dismiss may no longer be set up as affirmative defenses in the private respondent's answer.

The respondent Judge denied the petitioner's motion for reconsideration, and required the private respondent to present its evidence; thereafter, the petitioner also adduced his evidence in opposition thereto, on the basis of which the respondent Judge rendered his decision[13] or order, the dispositive portion of which reads as follows:

"THEREFORE, it is the considered opinion of this Court and so holds, that the plaintiffs have no cause of action against the defendant and consequently, this case is hereby Dismissed, with costs against the plaintiff, and to pay attorney's fees in the amount of P2,000.00

"The counterclaim of the defendant not having been substantiated with sufficient evidence, the same is hereby Dismissed."

Without filing a motion for reconsideration, the petitioners interposed the present petition, claiming that respondent Judge committed a grave mistake of law, and acted with grave abuse of discretion when he granted the private respondent a preliminary hearing on its affirmative defenses and in rendering his decision or order dismissing the complaint, and that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law except thru the present petition.

In compliance with the resolution of this Court, dated April 1, 1977,[14] the respondent Judge as well as the Private respondent filed their respective comment on the petition.[15] Thereafter, pursuant to the resolution of this Court, dated June 20, 1977,[16] petitioners filed their reply[17] to the respondents' comment on the petition.

In Our resolution of August 3, 1977 this Court resolved to consider the comments of the respondents as their answer to the petition, and the case deemed submitted for decision.[18]

In his comment, respondent Judge claims that he granted the private respondent's verbal petition for a preliminary

hearing on its affirmative defenses pursuant to Section 5, Rule 16 of the Revised Rules of Court which authorizes courts to conduct a preliminary hearing on affirmative defenses set forth in the defendant's answer. Upon the other hand, the private respondent contends, among others, that the instant petition is not the proper remedy to set aside the order or decision of the respondent Judge and that the latter did not act with grave abuse of discretion in issuing the disputed order. Hence, both respondents pray for the dismissal of the petition.

We find the petition to be without merit.

Section 5, Rule 16 of the Rules of Court provides as follows:

"Sec. 5. Pleading grounds as affirmative defenses. - Any of the grounds for dismissal provided for in this Rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed."

The aforequoted provision allows the grounds for a motion to dismiss to be set up as affirmative defenses in the answer if no motion to dismiss has been filed. If such motion has been filed and unconditionally denied, the grounds alleged therein are deemed finally adjudicated and cannot be alleged again in the answer. As to other grounds available at the time the motion was filed but not alleged therein, they are deemed waived, under Rule 15, Section 8, except those specified in Rule 9, Section 2, i.e., failure to state a cause of action and lack of jurisdiction over the subject matter.[19] Hence, although the private respondent failed to include in its motion to dismiss the ground of failure to state a cause of action, the same cannot be considered to have been waived, and it may be pleaded as an affirmative defense in its answer.

Besides, under this section a preliminary hearing may be had on the affirmative defenses as if a motion to dismiss had been filed. During such preliminary hearing evidence may be admitted. Nevertheless, We believe that the respondent Judge committed an error in conducting a preliminary hearing on the private respondent's affirmative defenses. It is a well-settled rule that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegations in the complaint itself. Whether those allegations are true or not is beside the point, for their truth is hypothetically admitted by the motion. The issue rather is: admitting them to be true, may the court render a valid judgment in accordance with the prayer of the complaint? Stated otherwise, the sufficiency of the cause of action must appear on the face of the complaint in order to sustain a dismissal on this ground. No extraneous matter may be considered nor facts not alleged, which would require evidence and therefore must be raised as defenses and await the trial.[20] In other words, to determine the sufficiency of the cause of action, only the facts alleged in the complaint, and no others should be considered.[21]

The respondent Judge departed from this rule in conducting a hearing and in receiving evidence in support of the private respondent's affirmative defense, that is, lack of cause of action.

Be that as it may, it is settled that certiorari, being an extra-ordinary remedy, can not be resorted to whenever another adequate remedy is available.[22] Indeed, under Section 1 of Rule 65 of the Rules of Court, the writ of certiorari will not lie where an appeal can be taken. The proper remedy in this case, it being for the setting aside of the order of dismissal, is appeal not certiorari. The order of dismissal in the instant case was a mere error of judgment, and was not a matter of lack or excess of jurisdiction.[23]

Having arrived at the above conclusion, We find it unnecessary to discuss the question of whether or not the respondent Judge should be disqualified from trying and deciding Civil Case No. 3055.

ACCORDINGLY, the instant petition should be, as it is hereby, dismissed for lack of merit.

SO ORDERED.

Santos, J., concur.

Fernando, J., (Chairman), concur with the qualification that he is in agreement with the views expressed by J. Barredo and J. Antonio on the power of a court to conduct a preliminary hearing on private respondent's affirmative defenses.

Barredo and Antonio, JJ., concurs in a separate opinion.

Aquino, J., did not take part.

[1] p. 7, Rollo.

[2] pp. 29-30, Rollo.

[3] pp. 7, 30, Rollo.

[4] Annex "B", p. 22, Rollo.

[5] Annex "D", p. 29, Rollo.

[6] Annex "E", p. 31, Rollo.

[7] Annex "C", p. 26, Rollo.

[8] Annex "C-1", p. 28, Rollo;

[9] Annex "D-1", p. 34, Rollo.

[10] Annex "F", p. 35, Rollo.

[11] pp. 11, 12, Rollo.

[12] Annex "M", p. 42, Rollo.

[13] Annex "N", p. 47, Rollo.

[14] p. 54, Rollo.

[15] pp. 63, 68, Rollo.

[16] p. 86, Rollo.

[17] p. 87, Rollo.

[18] Minutes of the proceedings held on Wednesday, August 3, 1977 (Item No. 10).

[19] 1 Moran, Rules of Court, 1970 Ed., p. 513.

[20] Adamos vs. J.M. Tuason, 25 SCRA 529.

[21] 1 Moran, Rules of Court, 1970 Ed., pp. 494-495.

[22] Javellana vs. Querubin, et al., 17 SCRA 873, and cases therein cited.

[23] Tirona vs. Nañawa, 21 SCRA 395, and cases therein cited.

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CONCURRING OPINION

ANTONIO, J.:

I concur on the basis of the following:

It must be noted that the trial court denied the motion to dismiss because the grounds thereof were not "indubitable but evidentiary * * *. Pursuant to Section 3, Rule 16, of the Rules, after hearing of the motion to dismiss, the court may either deny or grant the motion or allow amendment of the complaint, or if the ground alleged is not indubitable "defer the hearing and determination of the motion until the trial * * *". "Indubitable means "something that cannot be doubted; also cer-tain and unquestionable; without doubt".[1] Thus, if the court finds the allegations of the complaint to be sufficient but doubts their veracity, it must deny the motion to dismiss and require the defend-ant to answer and then proceed to try the case on the merits.[2] Consequently, the trial court con-ducted a hearing on the case which, although denominated as preliminary, was actually a trial on the merits; hence, its judgment dated January 26, 1977. It is important to note that, among others, the trial court found the following facts established by the evidence:

"The evidence of both parties show the fol-lowing uncontroverted facts: that on April 11, 1958, plaintiffs, together with the late Teodoro Dumalagan, entered into a contract of lease with the defendant on two parcels of land, designated as Lots 14 and 15, covered by Original Certificate of Title No. R0-37, of the Register of Deeds of Misamis Occidental.

"The plaintiffs allege that the land, sub-ject matter of the contract of lease, is the pro-perty of their father, Teodoro Dumalagan; that the land presently occupied by the defendant is the property of their mother, Juliana Clavano, which are designated as Lots No. 14 and 15, covered by Original Certificate of Title No. 0-42; that the plaintiffs when they affixed their signatures to the contract of lease at the instance of their father, were under the impression that the pro-perty, subject matter of the said contract, was the land belonging to their father and not the one belonging to their mother.

"However, upon careful perusal of the provisions of the contract particularly the description of the two lots under lease, this Court finds that the same described in the contract (Exhibit 'A') as follows:

"FIRST PARCEL: Bounded on the Northeast by Teodoro Dumalagan, on the Northwest by Lot No. 15, on the South-east by Lot No. 14, and on the South-west by Lot No. 13, having an area of 1769 square meters, and is assessed at P110.00 per Tax Dec. No. 43550. This parcel is known as Lot No. 14 of the Cadastral Survey at Looc, Plari-del, Misamis Occidental.

"SECOND PARCEL: Bounded on the Northeast by Teodoro Dumalagan, on the Southeast by Lot No. 14, on the North-west by Lot No. 12, and on the South-west by Lot No. 11, having an area of 1929 square meters, and is assessed at P160.00 per Tax Dec. No. 43549. This parcel is known as Lot No. 15 of the Cadastral Survey at Looc, Plaridel-Misamis Occidental.

which description tallies with the description of Lots No. 14 and 15 of the property of Juliana Clavano covered by Original Certificate of Title No. 0-42 (Exhibit 'C'). However, the title of the Certificate mentioned therein pertains to the land belonging to Teodoro Dumalagan under Title No. R0-37. Nevertheless, the plaintiffs upon the execution of the contract and thereafter, permitted the defendant to occupy the land of their mother, and tolerated them to construct a big commercial building thereon, and collected the rentals of the land in

accordance with the agreement in the contract.

"IN VIEW OF THE FOREGOING, this Court is of the opinion that the defendant is entitled to the possession of the land in question by virtue of the contract of lease (Exhibit 'A'), until the said contract is declared null and void by a competent Court or otherwise terminated upon agreement of the parties. Even though the land occupied by the defendant is not the land covered by Original Certificate of Title No. R0-37 as found in the Contract (Exhibit 'A'), nevertheless, the land so occupied is the very land described in the contract as Lots No. 14 and 15. Furthermore, when the defendant upon the execution of the contract, occupied Lots No. 14 and 15 and made use of the same by constructing a big commercial building thereon, the plaintiffs permitted and tolerated them to occupy and use the same, never complaining nor asserting that the said lots so occupied were not the very lots covered by their contract of lease, and matters stood thus until December 8, 1966 when the plaintiffs instituted an action against the defendant in connection with the contract of lease, docketed as Civil Case No. 2529 for Ejectment, Liquidation and/or Termination and Damages, which case was dismissed; and again on September 28, 1970, when plaintiffs filed Civil Case No. 2791, against the defendant for Reformation, Rescission and/or Collection with Damages which case is now on appeal at the instance of the plaintiffs. In the light of the foregoing, this Court believes that the description of the two lots, No. 14 and 15 in the contract, as well as the intention of the parties at the time the contract was entered into should prevail, and not the number of the certificate of title as appearing in the contract." [3]

Considering the afore-mentioned facts, I find that respondent Judge has not acted without or in excess of his jurisdiction or gravely abused his discretion in issuing the Order in question.

[1] Asejo v. Leonoso, 78 Phil. 467, 470.

[2] Piñero v. Enriquez, 84 Phil. 774.

[3] Annex "N", Petition.

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CONCURRING OPINION

BARREDO, J.:

I concur in the judgment to dismiss the petition herein.

While it is true that as a rule, when a motion to dismiss is based on failure of the complaint to state a cause of action, the sole criterion in determining whether or not such motion should be granted are the facts alleged in the complaint, it does not necessarily follow that if at the hearing of said motion the parties either upon direction of the court or with its acquiescence present their respective evidence, the court would be committing a grave abuse of discretion or exceed its jurisdiction should it decide the issue on the basis of the evidence thus before it. As Justice Antonio points out in his concurrence herein, the hearing where evidence were presented by both parties amounts to the trial of the case itself and the finding of the court resulting therefrom is a judgment, bare technicalities of procedure disregarded. In such an event, the remedy of the aggrieved party is not certiorari but appeal, hence the present petition cannot be entertained. In this connection, it might just as well be said that it is quite obvious that in the light of the facts found by the trial court which appear to be incontrovertible, even an

appeal by petitioners would have been futile.

Parenthetically, I might add that I do not subscribe to the view that after the court has denied a motion to dismiss, the ground of dismissal it has passed upon is already deemed finally adjudicated. I know that the statement on this point in the main opinion herein of Justice Concepcion is taken from Moran's comments on Section 5 of Rule 16, but since no reason is given by Moran to justify it nor is any authority cited by him in support thereof, I feel free to express a different pose. I am of the opinion that the denial of a motion to dismiss is always interlocutory in character. Therefore, the defendant cannot be precluded, should further developments at the trial show that a dismissal is indeed justified on the very same ground already passed upon in the order of denial, from asking the court to dismiss the action on the ground he had invoked. Thus, whether or not, the defendant reiterates his ground of dismissal as an affirmative defense in his answer, he has a right to present additional evidence in support of such ground.^[1] And even if he does not present additional evidence, if the very evidence of the plaintiff should evince the existence of such ground, it would only be logical and proper to allow the defendant to insist on a dismissal of the action and for the court to accede. It is in the very nature of an interlocutory order that it is subject to modification or reversal as the result of further proceedings may warrant, and correspondingly, it is the right of the parties concerned to try to improve their respective positions by presenting additional evidence or argument in the course of the trial or at the further stages of the proceedings, precisely to secure such modification or reversal. This is even a more expeditious alternative than insisting on prolonging the incident on the motion to dismiss itself.

[1] Many practitioners resort to the practice of reiterating the grounds of dismissal of their denied motions in their answers as affirmative defenses. I consider such reiteration unnecessary, even if it might serve as a continuing invocation for purposes of ultimate developments, considering the interlocutory nature of the denial. In my view, the only ground of dismissal in a motion to dismiss should be deemed automatically incorporated in the answer as an affirmative defense everytime the motion to dismiss is denied, considering the interlocutory character of such denial. Accordingly, it becomes part of a pleading that the party concerned has the right to additionally substantiate in the course of the trial.

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