

TEOPISTA B. DE BALANGA, ET AL., PLAINTIFFS AND APPELLANTS VS. LUIS MANALANG, DEFENDANT AND APPELLEE.*G.R. No. L-18830. October 30, 1965*

Ponente: DIZON, J.

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Appeal taken by Teopista B. de Balanga, for herself and in behalf of her minor children, Nelson and Rey, from the order of the Court of First Instance of Manila in Civil Case No. 46566 dismissing their complaint against Luis Manalang on the grounds of lack of cause of action, *res judicata* and improper venue.

The complaint alleges that sometime in the year 1947, appellant Teopista B. de Balanga and her husband, Faustino Balanga, bought with their common funds, a residential lot with an area of approximately 200 square meters situated at Sta. Cruz, Manila, the corresponding transfer certificate of title (No. 13363) having been issued by the Register of Deeds of Manila in the name of Teopista B. de Balanga, married to Faustino Balanga; that the spouses constructed thereon a residential house worth P17,000.00 where they and their minor children lived; that on August 3, 1949, Faustino Balanga died intestate leaving appellants herein as his surviving heirs; that on July 31, 1954, the spouses Catalino Clemente and Andrea Reyes, with appellee herein as counsel, filed an action in the Court of First Instance of Manila against appellant Teopista B. de Balanga (Civil Case No. 23621) to compel her to execute a deed of mortgage covering the lot and house mentioned heretofore in their favor, as security for the payment of a loan in the amount of P6,050.00 obtained by her, and to pay damages; that on October 19, 1954, the court rendered judgment requiring defendant therein to pay the Clemente spouses the sum of P5,750.00, with legal rate of interest from July 31, 1954, plus P500.00 as attorney's fees and costs; that after the judgment had become final and executory, the court issued a writ of execution against said defendant, and pursuant thereto, her rights, interests and participation in the residential house and lot aforementioned were levied upon, and sold at public auction to the Clemente spouses as the highest bidders; that after said sale, the purchasers transferred the property to herein appellee; that the auction sale was not published in both English and Spanish Languages; that the Sheriff of Manila issued in favor of the Clementes a certificate of sale for the entire house and lot for the amount of the judgment against Teopista B. de Balanga, to the damage and prejudice of the latter's minor children, Nelson and Rey, who are owners of one-half undivided interests thereof; that appellee, before the one-year period of redemption, caused the Clementes to assign to him the said house and lot in violation of the prohibition that lawyers can not acquire either by assignment or purchase the properties under litigation in which they had taken part as counsel, and that appellee had illegally caused their ouster from their house and lot in September 1956 and since then had been collecting rentals thereon in the sum of P150 a month.

Upon the above facts the complaint prayed that the execution sale mentioned therein as well as the transfer of the property to appellee be set aside and declared void. Appellee filed a motion to dismiss the complaint on the following grounds: (1) that plaintiffs had no legal capacity to sue, and (2) that the complaint stated no cause of action against him.

On April 17, 1961, the court issued the appealed order dismissing the complaint on the following grounds: (1) that

appellee "is not the necessary party to this case of annulment of sale; hence, the complaint states no cause of action insofar as he is concerned"; (2) "that the issue of regularity or irregularity in the sale by virtue of the writ of execution x x x x could have been threshed out in Civil Case No. 23621 aforementioned. Hence, that same issue is considered as res judicata in the present case"; and finally, (3) that the venue of the action was improperly laid.

The facts alleged in the complaint evidently constitute a cause of action against the proper parties for the annulment of the execution sale referred to at least in so far as it concerned one-half of the properties levied upon and sold - which belonged to the minor children of the Balanga spouses as heirs of their deceased father.

The action, however, should have been directed not only against appellee, Luis Manalang, but also against the spouses Catalino Clemente and Andrea Reyes, and the sheriff of the city of Manila who conducted the execution sale.

With respect to the res judicata and improper venue relied upon in the order appealed from, We find that the same were not raised in appellee's motion to dismiss (record on appeal, p. 10). They were, therefore, improperly considered by the lower court.

Wherefore, the order of dismissal appealed from is hereby set aside and this case is remanded to the lower court for further proceedings in conformity with this decision. With costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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