

TOMAS ALARCON, PLAINTIFF-APPELLANT, VS. RUFINA GUERRERO VDA. DE TORRES AND J. M. TUASON & CO., INC., DEFENDANTS-APPELLEES.

G.R. No. L-21656. March 31, 1967

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the order of the Court of First Instance of Manila dismissing the complaint in Civil Case No. Q-5046, for "Specific Performance Damages, etc." filed by Tomas Alarcon against Rufina Guerrero vda. de Torres and J. M. Tuason and Co., Inc., the ground for such dismissal being the existence of *lis pendens*. The appeal was first brought to the Court of Appeals but that court certified it to us on the ground that only questions of law are involved.

In its first cause of action, the complaint states that on March 18, 1949, Agustin de Torres, predecessor in interest of Rufina Guerrero vda. de Torres, executed a deed of sale conveying to the plaintiff a parcel of land of 1,000 square meters, for the sum of P3,000, P300 of which was paid upon the signing of the contract and the remaining P2,700 supposed to be paid within ten years. This balance was, however, refused acceptance by Rufina Guerrero upon repeated tenders made by the plaintiff.

Under the second cause of action, the following are alleged:

"3. That on September 9, 1958, a complaint was filed by the defendant J. M. Tuason & Co., Inc. against the herein plaintiff, which complaint was docketed as Civil Case No. Q-3277 entitled J. M. Tuason & Co., Inc., Plaintiff, versus Tomas Alarcon, Defendant"

"4. That in the said complaint, J. M. Tuason & Co., Inc. alleges that it is the registered owner of a parcel of land covered by T.C.T. No. 1267 (37686X of the Registry of Deeds of Quezon City, a portion of which is Lot No. 20 which was contracted to be sold by Agustin de Torres to the plaintiff, x x x.

"5. That as a consequence of the filing of the said complaint, the plaintiff is now exposed to the danger of being evicted from the premises known as Lot No. 20, x x x and condemned to pay the reasonable value for the use and occupation of the said parcel of land which J. M. Tuason & Co., Inc. claims to be P100 a month."

"xxx xxx xxx

Under the third cause of action, the following are also alleged:

"3. That on March 16, 1953, the defendant Rufina Guerrero Vda. de Torres, in representation and as successor-in-interest of Agustin de Torres, together with others collectively referred to as the 'DEUDORS,' entered into a COMPROMISE AGREEMENT with the defendant J. M. Tuason & Co., Inc., a copy of which agreement is hereto attached as Annex 'C' and made an integral part of the foregoing complaint;

"4. That it appears in the said COMPROMISE AGREEMENT that the defendant Rufina Guerrero Vda. de Torres, among others and together with the other DEUDORS sold the possessory rights over the parcels of

land described therein, which include the parcel of land her predecessor-in-interest Agustin de Torres had contracted to sell to the plaintiff;

"xxx xxx xxx

"6. That the defendant J. M. Tuason & Co., Inc. conformably to the said agreement, should be ordered to enter into a new contract of purchase with the plaintiff with respect to Lot No. 20; and to respect the necessary rights of the plaintiff thereto;

"7. That if the plaintiff be compelled to enter into such new contract of purchase at the current and higher price per square meter than that agreed to in that document captioned 'DEED OF SALE,' x x x the difference should be deducted and deemed compensated from the sum of P89,511.77, as representative and successor-in-interest of Agustin de Torres, is entitled to receive from the defendant J. M. Tuason & Co., Inc. under Condition SIXTH of the said COMPROMISE AGREEMENT, x x x;

"xxx xxx xxx

Among others, the complaint prays that the defendant J. M. Tuason & Co. be ordered to enter into a new contract of purchase with the plaintiff with respect to Lot No. 20; and, that in the event that purchase price be based at the current price per square meter higher than the agreed price stipulated in the Deed of Sale, the difference between said prices be deducted and ordered compensated from the sum of 189,511.77 which the defendant J. M. Tuason & Co., Inc. is obligated to pay the defendant Rufina Guerrero Vda. de Torres under Condition No. SIXTH of the aforesaid compromise agreement; and, the defendant J. M. Tuason & Co., Inc. be ordered to execute and deliver to the plaintiff the final deed of conveyance and title to said Lot No. 20, and pending the same, to recognize the quiet and peaceful possession of the plaintiff over the said parcel of land.

Instead of answering the amended complaint, the defendant J. M. Tuason & Co., Inc., thru its counsel, filed a motion to dismiss it, on the ground that there is another action pending between the same parties for the same cause.

After considering the opposition to the motion to dismiss and reply thereto, and finding the said motion to be meritorious, the court below dismissed the case.

Not satisfied, the plaintiff, Alarcon, has appealed maintaining the inclusion of J. M. Tuason as party in his complaint, with the argument that there is no *lis pendens* in this case.

The following are the requisites of *lis pendens* as a ground for the dismissal of a complaint: (1) Identity of parties, or at least such as presenting the same interests in both actions; (2) Identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) Identity in both cases is such that the judgment that may be rendered in the pending case would, regardless of which party is successful, amounts to *res judicata* in the other.[1]

It is not disputed here that, as alleged in paragraphs 3 and 4 under the Second Cause of Action of the complaint, there is another case (Civil Case Q-3277) pending in the court between the plaintiff Alarcon and defendant J. M. Tuason & Co., Inc., involving the same parcel of land. For this reason, We have only to resolve the issue as to whether or not the causes of action in the two cases are such that decision in the pending case would amount to *res judicata* to this case later filed.

In Civil Case No. Q-3277, J. M. Tuason, as plaintiff, claims ownership of the lot in question by virtue of a transfer certificate of title issued to it by the Register of Deeds of Quezon City. In his answer with counterclaim, the herein plaintiff-appellant, as defendant therein, also asserts ownership over the same lot by virtue of a Deed of Sale executed by Agustin De Torres in his favor. In other words, the case Q-3277 filed by Tuason is an *accion*

publiciana seeking to recover possession of the lot over which Alarcon also claims title. Indeed, the court has first to make a finding as to who is the real owner of the lot before it can resolve the question as to who has the better right to its possession.

In the present case, Q-5046, the plaintiff-appellant seeks to enforce an alleged preferential right granted to him under the compromise agreement entered into between the "DEUDORS" (one of whom is Rufina Guer-rero) and J. M. Tuason & Co., Inc., as, according to him, he is a buyer in good faith, and, consequently, J. M. Tuason & Co., Inc. must recognize and deliver to him the corresponding title to the land free from all liens and encumbrances. This claim of plaintiff-appellant is anchored upon that very deed of sale mentioned in Q-3277 which was executed by Torres in his favor. Similarly, in order for the court to determine here whether or not Tuason should be ordered to deliver the title to the land to the plaintiff-appellant, the question of ownership will first have to be decided.

With the identities as shown above, it would result that whatever judgment that may be rendered in Civil Case No. Q-3277 will be res judicata in Civil Case No. Q-5046, because a finding as to ownership of the land in question is necessary, if not the main issue, in both cases.

The instant case is similar to previous cases decided by this Court^[2] concerning the same compromise agreement allegedly executed between the DEUDORS and J.M. Tuason & Co., Inc. on March 16, 1953. Consistently, We dismissed, on the grounds of either lis pendens or res judicata, as the case may be, those actions that involved the same parties and the same subject matter as other cases that had been filed and/or decided ahead.

WHEREFORE, the order dismissing Case No. Q-5046 with respect to J. M. Tuason & Co., Inc. is hereby affirmed, with costs against the plaintiff-appellant.

Concepcion, C.J., Reyes, Dizon, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.
Makalintal, J., took no part.

[1] Manuel v. Wigett, 14 Phil. 9; Hongkong & Shanghai Banking v. Aldecoa, 30 Phil. 255; Olayvar v. Olayvar, 51 O.G. 6219; Del Rosario et al v. Jacinto, et al., G.R. No. L-20340, September 10, 1965.

[2] Del Rosario v. Jacinto, supra; Roman et al v. J. M. Tuason & Co., Inc., G.R. No. L-21692, Dec. 29, 1965; Deudors v. J.M. Tuason & Co., et al., G.R. No. L-20105, Oct. 31, 1963.

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