

PERLA C. PACUESA, PETITIONER, VS. SIMEON DEL ROSARIO AND THE HONORABLE COURT OF APPEALS (THIRD DIVISION), RESPONDENTS.*G.R. No. L-26353. July 29, 1968*

Ponente: SANCHEZ, J.

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Rejected by the trial court and thwarted by the Court of Appeal on certiorari and mandamus, petitioner comes to this Court on appeal, by way of certiorari, praying that the ruling of the lower courts be reversed and that she be allowed to intervene in Civil Case 2419-P of the Court of First Instance of Rizal, entitled "Simeon del Rosario, Plaintiff, vs. The Equitable Insurance & Casualty Co., Inc., Defendant". Petitioner explains that this appeal is limited to "that portion of the decision [of the Court of Appeals] dismissing the petition in the court below on the sole ground that the intervention, if allowed, would 'unduly delay and prejudice the rights of the original parties to the case'".

The factual backdrop is this:

On February 7, 1957, the Equitable Insurance & Casualty Co., Inc. - hereinafter referred to simply as Equitable - issued two policies: the first, Personal Accident Policy No. 7136 on the life of Francisco del Rosario, also known as Paquito Bolero; the other, Master accident Policy No. 7137, covering those of 24 members of the vaudeville troupe of Francisco del Rosario. Beneficiary under the first policy was Remedios Jayme, one of those who perished in the accident hereinafter to be mentioned. Beneficiary under the companion policy is Francisco del Rosario, the proceeds of which are payable to him "if surviving the Insured, otherwise to the estate of the Insured".

On February 24, 1957, Francisco del Rosario, together with the members of his vaudeville troupe, were forced to jump off the motor launch "L-lamia" due to a fire that broke out in said vessel while in the waters of Jolo. Francisco del Rosario and 21 of his group died of drowning.

Simeon del Rosario (father and heir of Francisco del Rosario) claimed the proceeds of the two policies. A divergence of views arose as to the amount payable for the death of Francisco del Rosario. Because of this, agreement between Simeon del Rosario and Equitable allegedly was entered into whereunder the former would file against the latter a test case on Personal Accident Policy No. 7136; and that in reference to Master Policy No. 7137, the parties were to be governed by the result of that judicial test.

So it is that Simeon del Rosario sued Equitable on Policy No. 7136 before the Court of First Instance of Rizal in Civil Case No. 1807-P of said court, entitled "Simeon del Rosario, Plaintiff, vs. The Equitable Insurance & Casualty Co., Inc., Defendant". On September 1, 1958, the trial court's judgment declared that the insurer's liability to Simeon del Rosario was P3,000 on Policy No. 7136 aforementioned. On June 29, 1963, on appeal from said court, this Court affirmed.[1]

Refusal of Equitable to honor the alleged covenant brought about the second case, Civil Case 2419-P of the Court of First Instance of Rizal, instituted on September 6, 1963 by Simeon del Rosario against Equitable for the collection of the proceeds of Master Accident Policy No. 7137.

On December 7, 1965, Perla C. Pacursa, "in her behalf and for others similarly situated", moved to intervene in Case 2419-P, alleging that she is the sole heir of her husband Perfecto Pacursa and her son Adolfo Pacursa, both members of Francisco del Rosario' vaudeville troupe; and that "the other intervenors" (without naming them) are heirs of other members of the troupe. All those vaudevilli who perished in the accident of February 24, 1957 aforesaid - it is claimed - were covered by Master Accident Policy No. 7137. That motion to intervene - to which the complaint in intervention was attached - was set for hearing by Pacursa's counsel himself on December 11, 1965, finally submitted for resolution on December 24, 1965.

Meanwhile, defendant Equitable completed the presentation of its evidence on December 8, 1965. Trial of the case ended on that day, i.e., one day after the motion to intervene was filed.

On December 27, 1965, the Court of First Instance of Rizal issued an order in said Case 2419-P, which reads: "Considering the 'Motion For Intervention' filed on December 7, 1965 by counsel for the intervenors and the opposition thereto and it appearing that the hearing of this case has already terminated, said motion is hereby denied pursuant to section 2, Rule 12 of the New Rules of Court". Reconsideration was denied in the trial court's order of January 12, 1966.

Perla Pacursa went to the Court of Appeals on certiorari and mandamus with prayer for a writ of preliminary injunction, and for judgment to annul the orders of December 27, 1965 and January 12 1966 just mentioned.[2]

The Court of Appeals, on March 17, 1966, ordered the issuance of a temporary restraining order upon a P1,000-bond.

Came the judgment of the Court of Appeals on June 27, 1966. Pacursa's petition for certiorari and mandamus just mentioned was overthrown, and the writ of preliminary injunction (should be temporary restraining order) dissolved. Reconsideration was refused on July 20, 1966.

On July 30, 1966, petitioner Pacursa lodged the present appeal by way of certiorari adverted to earlier in this opinion.

In the meantime, with the restraining order out (no injunction was prayed for in this Court), the way was clear for the Rizal court to proceed with Civil Case 2419-P. Judgment was, on November 8, 1966, there rendered ordering defendant Equitable to pay plaintiff Simeon del Rosario the total sum of P63,000,[3] with legal interest attorneys' fees, and the costs. Equitable appealed to the Court of Appeals.[4]

On motion of plaintiff Simeon del Rosario, the Court of Appeals, on November 11, 1967, dismissed Equitable's appeal from the judgment on the merits rendered in said Case 2419-P of the Court of First Instance of Rizal, for failure of the record on appeal to show on its face that the appeal was perfected within the permissible period fixed by the Rules. A motion to reconsider was denied by said appellate court on January 17, 1968.

Said case was elevated to this Court on petition for review on certiorari.[5] Petitioner - Equitable - in that case (L-28714) prays that the resolutions of respondent Court of Appeals of November 11, 1967 and January 17, 1968 be set aside, and that said court be directed to reinstate Equitable's appeal (in Case 2419-P of the Rizal court).

By resolution of this Court of April 1, 1968, Equitable's petition for review on certiorari was denied due course. A move to reconsider is under consideration by this Court.

Back to the present case (L-26353) - Perla Pacursa's (in her behalf arid for others similarly situated) - for

intervention. Did the Court of First Instance of Rizal abuse its discretion in refusing intervention in Case 2419-P? Did the Court of Appeals err in sustaining the trial court? For three reasons, the answer to both questions must be in the negative. First, petitioner is guilty of laches; second intervention will cause undue delay and will prejudice the adjudication of the rights of the original parties; and third, the Rizal court is now powerless to grant intervention.

The controlling provisions of the Rules of Court are:

"SEC. 2. Intervention. - A person may, before or during a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other, disposition of property in the custody of the court or of an officer thereof.

(a) Motion for intervention. - A person desiring to intervene shall file a motion for leave of court with notice upon all the parties to the action.

(b) Discretion of court. - In allowing or disallowing a motion for intervention, the court, in the exercise of discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding.

x x x".[6]

1. A party in interest who desires to pursue judicial relief - in intervention - must do so within a reasonable time. He should not idly sit by. He should be diligent. He should not permit precious time to pass before he asserts his rights in court. He should not allow a litigation in which he has a vital interest to proceed and then make an eleventh-hour effort to squeeze himself in. These are guiding principles the purpose of which is to save parties already in court from undue delay and prejudice in the adjudication of their right arising out of intervention.

Here is the position of petitioner Pacursa vis-a-vis the original parties in Case 2419-P of the Court of First Instance of Rizal: The accident occurred on February 24, 1957. By the terms of Master Accident Policy No. 7137, no action shall be brought thereunder (Clause 15, par. VII of the Policy) unless filed within two years from the expiration of the time within which to give notice of the accident to the insurer. That notice under Clause 9 should normally be given within twenty days from the time of the accident. These covenants in the policy should have spurred petitioner and others similarly situated to take court action within the limited period. And yet, here, petitioner (and those she purportedly represents) did not seek intervention until December 7, 1965. They did not bestir themselves for over eight years from the date of the accident. They sought to intervene only after six years from the lapse of the stipulated period within which to file an action, and over two years after respondent del Rosario started suit against the insurance company. In plain language, they wanted to ride on the coat tails of del Rosario. But del Rosario's case against Equitable is upon a different cause of action. It is predicated on an agreement with the insurer - without reference to the period of filing suit set forth in the insurance policy. It is quite plain that what petitioner "and others similarly situated" would want to do is to get hold of the entire proceeds of Master Accident Policy No. 7137 at the expense of del Rosario, and case out del Rosario from any judgment the latter might obtain in Case 2410-P. They will profit. Simeon del Rosario will be left out in the cold. This is certainly not fair. For this reason alone, we hold that their delay is inexcusable. It could work injustice. Laches should be a bar.

2. On the merits of her motion for intervention, petitioner Pacursa says that she would be able to get through with her evidence in two or three sittings. By this, she infers that no substantial pre-judice to the parties already in the case would ensue. Between what a party says and the realities of court proceedings, there is a quite a distance.

Petitioner's intervention is not merely for herself; it is for 19 others. Under the terms of the policy, for petitioner's case and those of others similarly situated to prosper, they must prove that Francisco del Rosario predeceased each and everyone of them. This is a huge task; it is time consuming. Petitioner should not expect that respondent Simeon del Rosario will take any evidence to that effect hands down. Substantial time has passed since the date of the accident. There is the difficult task to be undertaken by respondent Simeon del Rosario - search for and marshall his evidence. How about the tremendous expenses? The place of accident is Jolo. The trial court sits in Rizal.

And then, time has a way of inducing treachery of memory; it works to obliterate important evidence. Surely enough, it is clearly past the time when intervention should be allowed. The original parties and the court will be enmeshed in divers claims which will no doubt retard disposition of the case. And yet, to petitioner, a pointless and frustrating result is not improbable at all. Really, not even an allegation was made either in the motion to intervene or in the complaint in intervention that the 21 persons insured survived Paquito Bolero, the beneficiary under the policy, in that accident of February 24, 1957. The other parties should not, therefore, be saddled with a burden of meeting petitioner's complaint in intervention. That complaint is denuded of equitable grounds. It is not arguably protected by the Rules. To repeat, by the intervention sought, not only will undue delay ensue, but grave prejudice will visit upon respondent Simeon del Rosario at least. Intervention is improper.

3. We pause to mull over the reason of the judge of the Court of First Instance of Rizal in refusing petitioner's intervention in Case 2419-P. His Honor's order of December 27, 1965 correctly states that by the time that order was issued, the hearing of the case had already terminated. As we look back at the facts, we find that the motion for intervention was registered on December 7. That motion did not ask the trial court to stop the trial of the case pending resolution thereof. Said motion was not brought to the lower court's attention until December 11 when it was set for hearing. On December 11, the trial had already terminated since defendant in that case (Equitable) closed its evidence on December 8. The lower court was thus powerless to grant the intervention. For, its authority to permit a person to intervene is delimited by the provisions of Section 2, Rule 12, Rules of Court - "before or during a trial". And trial is here used in a restricted sense and refers to "the period for the introduction of evidence by both parties".[7]

On top of all these is the fact that the Court of First Instance of Rizal, on November 8, 1966, had already rendered its judgment on the merits in favor of Simeon del Rosario and against Equitable in the principal case (Case 2419-P). It is to be remembered that Equitable's appeal therefrom was dismissed by the Court of Appeals (CA-G.R. No. 37347-R), and on further appeal to this Court (L-28714; was likewise dismissed. Although, of course, the insurance company motion for reconsideration is still under advisement. The point to be stressed is that the Court of First Instance of Rizal is now bereft of authority to grant intervention. Said court may no longer *motu proprio* reopen the case. There is no more principal proceeding in the trial court wherein petitioner can intervene. All that is incumbent upon the lower court is to wait for this Court's final decision on the matter. Thereafter, said Case 2419-P enters into the stage of execution of the judgment. After all, "intervention is never an independent action, but is ancillary and supplemental to the existing litigation".[8] The lower court having lost jurisdiction over the case, intervention therein certainly is out.

As we close, we find that there is absolutely nothing in the record that would permit this Court to tag the order of the Court of First Instance of Rizal in its Case 2419-P denying intervention as an improvident exercise of discretion. The Court of Appeals correctly overturned petitioner's petition for certiorari and mandamus.

Upon the record as it stands, we vote to dismiss the petition to review the decision of the Court of Appeals of June 27, 1966 in CA-G.R. No. 37247-R dismissing the petition for certiorari and mandamus, and its order of July 20, 1966 denying recon-sideration of said judgment.

Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] L-16215, entitled "Simeon del Rosario, Plaintiff-Appellee, vs. The Equitable Insurance & Casualty Co., Inc., Defendant-Appellant.

[2] CA-G.R. No. 37247-R, entitled "Perla C. Pacursa, Petitioner vs. Simeon del Rosario and The Honorable Court of First Instance of Rizal, Branch VII, Respondents".

[3] This sum of P63,000 is the total indemnity for 21 members of Paquito Bolero's vaudeville troupe at P3,000 each.

[4] Docketed as CA-G.R. No. 39819-R, entitled "Simeon del Rosario Plaintiff-Appellee, vs. The Equitable Insurance & Casualty Co., Inc., Defendant-Appellant".

[5] L-28714, entitled "The Equitable Insurance & Casualty Co., Inc. Petitioner, vs. The Honorable Court of Appeals and Simeon del Rosario, Respondents".

[6] Section 2, Rule 12, Rules of Court.

[7] Bool vs. Mendoza, 92 Phil. 892, 895; Trazo vs. Manila Pencil Co., Inc., 1 Supreme Court Reports Anno. 403, 405.

[8] Garcia vs. David, 67 Phil, 279, 282; Clareza vs. Rosales, 2 Supreme Court Reports Anno. 455, 457. See: Reliance Com-mercial Enterprises, Inc. vs. Board of Tax Appeals, 97 Phil. 1001 1002.

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