

LEONCIO SOLEDAD, PLAINTIFF AND APPELLEE, VS. PAULO MAMANGUN, DEFENDANT AND APPELLANT.

G.R. No. L-17983. May 30, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Leoncio Soledad brought an action before the Municipal Court of Manila to recover the unpaid rentals on certain leased premises at the rate of P180.00 a month and praying that Paulo Mamangun be ordered to vacate and surrender said premises to plaintiff. In a written manifestation filed at a later date, plaintiff was allowed to verify the complaint.

On November 25, 1958, defendant filed a motion to dismiss alleging that the court has no jurisdiction over the case because there is no allegation in the complaint that he was illegally withholding the possession of the property even if there is a request in the prayer that he be ordered to vacate the premises and restore its possession to plaintiff, the amount to be recovered being more than P2,000.00.

Before action thereon could be taken, plaintiff filed an amended complaint wherein he included the requisite allegations which would cure the defect pointed out by defendant. Defendant filed an opposition to the admission of the amended complaint alleging that, not having acquired jurisdiction over the original complaint, the court "had neither the power nor the jurisdiction to act on the motion for admission of the amended complaint, much less to allow such amendment since it is elementary that the court must first acquire jurisdiction in order to validly act therein." The court denied the motion to dismiss, as well as the opposition to the amended complaint, and thereafter allowed plaintiff to present his evidence. Defendant did not participate in the hearing upon his belief that the court had no jurisdiction over the case. And on the strength of the evidence presented the court rendered judgment ordering defendant to restore the property to plaintiff and to pay him the sum of P2,520.00 as unpaid rentals from November 1, 1957 to December 31, 1958, plus the rentals due from January 1, 1959 at the rate of P180.00 a month, and the sum of P100.00 as attorney's fees.

Defendant appealed to the Court of First Instance wherein he reiterated his motion to dismiss based on the same grounds set forth in the motion to dismiss filed before the municipal court. The court again denied the motion to dismiss. After defendant had filed his answer within the reglementary period wherein he averred once more his special defense concerning want of jurisdiction, defendant brought the matter on certiorari before this Court, but the petition was dismissed for lack of merit in a resolution entered on June 9, 1959.

On August 25, 1960, after the parties had agreed to submit the case on the pleadings, the court a quo rendered judgment ordering defendant to pay to plaintiff the sum of P180.00 a month from November 1, 1957 until such date as he may vacate the premises, plus the sum of P200.00 as attorney's fees and the costs of suit. This is an appeal from said decision.

It is contended that the court a quo erred in not dismissing the complaint on the ground of want of jurisdiction for the reason that the original complaint filed before the municipal court failed to aver that it was an action for

unlawful detainer and the amount being recovered was beyond the jurisdiction of that court. In other words, plaintiff insinuates that the court a quo erred in not considering the original complaint filed by the plaintiff before the municipal court as one simply for recovery of a sum of money which was beyond its jurisdiction even if later it was amended over the opposition of defendant.

In overruling this argument the court a quo acted on the theory that appellee had the right to amend his complaint as a matter of course considering that at the time he did it appellant has not yet interposed any responsive pleading. Thus, the court said: "The amended complaint admitted by the Municipal Judge was filed before the defendant has entered his answer. The defendant contends that since said amended complaint was filed after he has filed his motion to dismiss, the first sentence of Section 1, Rule 17 (SUPRA) is not applicable. But this Court is of the opinion that a motion to dismiss is not a responsive pleading, so that its filing would not deprive the plaintiff of his right to amend his complaint at his pleasure." [1]

We agree to the above ruling for under the provision already above-referred to a party may amend his pleading once as a matter of course at any time before a responsive pleading is served upon him. And it is a matter which cannot be disputed that a motion to dismiss is not a responsive pleading. [2] The contention that the court a quo also erred in admitting the amended complaint not having jurisdiction to act on the motion for its admission is also untenable for appellee being entitled to submit said amended complaint as a matter of course, there was no need for the court to allow its admission, since appellee's right to do so cannot be disputed. Another proof that the court a quo did not act improvidently in overruling the argument of appellant is the fact that the petition for certiorari he interposed against the action of the court a quo was dismissed by this Court on the ground that it had no merit.

WHEREFORE, the decision appealed from is affirmed, with costs against appellant.

Bengzon, C. J., Padilla, Conception, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Pedro Paeste, et al. v. Rustico Juarigue 50 O. G., 112.

[2] US. vs. Newbury Mfg. Co. CCA. Mass, 1941, 123 F, 2d 543; Keene Lumber Co. vs. Leventhal, CCA. Mass. 1948, 165 F. 2d 815; Porter vs. Montaldo's D.C. Ohio, 1946, 71 F. Supp. 372; See also Lao, et al. vs. Bee and Lao, L-2890, January 23, 1952.

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