

J. M. TUASON & CO. INC., REPRESENTED BY ITS MANAGING PARTNER, THE GREGORIO ARANETA, INC., PLAINTIFF AND APPELLEE, VS. ADOLFO MAGDANGAL, DEFENDANT AND APPELLANT.

G.R. No. L-15539. January 30, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This case originated in the court below in a complaint for recovery of possession filed by appellee J. M. Tuason & Company, Inc. on January 7, 1959 against the appellant Adolfo Magdangal (Civil Case No. Q-3700, C. F. I. of Rizal), involving 700 square meters of land in Tatalon, Quezon City, which is part of the land known as the Sta. Mesa Heights Subdivision, registered in plaintiff's name under Transfer Certificate of Title No. 1267. The complaint charged defendant with having obtained possession of the land in question through force, strategy, and stealth, and prayed for the surrender of its possession to plaintiff, plus damages and costs.

On February 26, 1959, defendant Magdangal, through counsel Atty. Manuel B. Ruiz, filed his answer, denying the allegations of the complaint, and claiming, among other things, that he bought the land in question from one Eustaquio Alquiros, who in turn acquired it from Tomas Deudor, whose predecessors owned the land in question under a certificate of ownership issued and registered during the Spanish regime; that it was only due to a misdescription and misrepresentation of the boundaries of plaintiff's land in the registration case that the property in question was brought under its certificate of title; and that said title is, therefore, void with respect to the land in question.

Issues having been joined, the court issued a notice to the parties that the case would be heard on March 19, 1959.

Two days before the scheduled hearing, however, defendant Magdangal filed a motion to dismiss the complaint on the ground that there was another action pending between the parties for the same cause: namely, a complaint filed on March 6, 1959 in the lower court by Eustaquio Alquiros, defendant's predecessor in interest and vendor, against the same plaintiff herein, J. M. Tuason & Co., Inc., for the reconveyance of 1.5 quiñones of land of which the property here in dispute forms part. The motion was set for hearing by defendant on the following motion day, Saturday, March 21, 1959.

As the case had already been previously set for trial on March 19, however, it was called for hearing on said date. Defendant argued that it was not ready for trial until his motion to dismiss was resolved, and that said motion was scheduled for hearing two days later, March 21. Plaintiff, on the other hand, objected to the motion, claiming that it was improper because defendant had already filed an answer, and that furthermore, it was filed only for purposes of delay. In view of plaintiff's objections, and taking into account that defendant had been notified of the hearing on that day as early as March 4, 1959, the court denied the motion and ordered the parties to present their respective evidence, appointing a commissioner to receive such evidence. Defendant moved for postponement on the ground that he was not ready for trial, and when postponement was denied, made of record that he was not

submitting to a trial by commissioner and left the court room. Whereupon, the hearing proceeded in defendant's absence and on March 31, 1959, the court rendered judgment ordering defendant to vacate the premises and to pay plaintiff the sum of P50 a month from the date of his occupation of the land in question until its return. Upon receipt of this judgment, defendant appealed directly to this Court.

Defendant-appellant claims that the lower court erred (1) in ordering the trial of the case on the merits before hearing his motion to dismiss; (2) in denying his motion to dismiss without any hearing; and (3) in ordering a trial of the case by commissioner without his consent and over his vigorous objection.

The first two contentions are patently without merit.

The records show that as early as March 4, 1959, appellant had already been notified that this case would be heard on the merits on March 19, 1959. Likewise, as early as March 6, appellant had already known about the action filed by his vendor Alquiros against herein plaintiff J. M. Tuason & Co., for Alquiros was represented in that case by the same counsel that represents appellant in this case, Atty. Manuel B. Ruiz. Between March 6 and March 19, therefore, appellant had more than sufficient time to present his motion to dismiss and have it resolved before the hearing of March 19, if he had wanted to avoid delay in the disposition of the case, and there was no justifiable reason why the trial of the case on the merits on March 19 should be postponed just because he had set his motion for hearing two days later, or on March 21. Actually, the three-day notice required by law in the filing of motions is, as appellee correctly observes, intended not for the movant's benefit but to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the motion. Thus, where the opposing party himself is willing to have the motion heard on shorter notice, there is nothing that precludes the court from hearing and disposing of it earlier than the regular motion day, or in less than three days from notice or filing of the motion.

It further appears that when this case was called for hearing on March 19, plaintiff actually opened argument on the merits of appellant's motion when it objected thereto on the ground it was allegedly improper because defendant had already filed an answer and that it was presented only for purposes of delay. Appellant should have then and there argued in favor of his motion, therefore, instead of insisting that the case was not ready for trial until his motion was heard the following motion day, Saturday, March 21st. And even after the motion was denied following plaintiff's objections, still appellant could have moved for the reconsideration of the denial and endeavored to convince the court that his motion should be granted. Appellant had thus been given ample opportunity to argue his motion to dismiss during the hearing of March 19, and he should not now be heard to complain that he was not afforded a hearing thereon or that it was denied without a hearing.

As for the correctness of the lower court's ruling denying appellant's motion, again we do not think it committed error in that regard. In the first place, the other pending action pleaded in abatement of the present case was filed by one who had no longer any interest over the land involved herein, having sold it to appellant long before the action was filed, so that whatever judgment is rendered in said case would not in anyway bind the property here in question or affect the rights of the parties in this case. In the second place, we have already ruled in another case also involving the Tatalon estate and herein plaintiff J. M. Tuason & Co., Inc., that the pendency of another action for recovery of ownership can not be pleaded to dismiss an action for recovery of possession filed by herein plaintiff as registered owner, the issues involved being different (*J. M. Tuason & Co., Inc. vs. Bolaños*, 95 Phil., 106.)

Lastly, appellant argues that it was illegal for the court below to delegate the trial of this case to a commissioner without his consent and over his vigorous objection. The error referred to, if at all an error, is, however, only a procedural irregularity that does not taint the proceedings with nullity if no substantial prejudice to the rights of

the defendant is shown.

"No showing having been made that the clerk of court committed any error in the performance of the work entrusted to him or that the court did not make a correct appreciation of the evidence because it was received by another person, the error alleged is nonprejudicial and should be no ground for a retrial." (Gayon vs. Ubaldo, L-7650, December 28, 1955)

Indeed, even if we assume that appellant, if he had been present at the trial, would have been able to establish all his defenses to the complaint, namely, that he did not enter the land in question by force or stealth but in virtue of a deed of sale from the lawful owner, and that plaintiff's title with respect to said land is void because the decree of registration in favor of plaintiff in the registration case did not include defendant's land but the same was brought under its title only through fraud and misrepresentation on the part of plaintiff as to the boundaries of the land decreed registered in its name, still such defenses would have been successfully met and overcome by the argument of prescription, considering that plaintiff's title was issued way back in 1914 and any action for reconveyance based on a constructive trust would have already prescribed ten years from 1914.[1] Thus, whether or not appellant had been present at the trial and proved all his defenses, exactly the same result would have been reached; namely, that as plaintiff's title can no longer be assailed or impugned, it is entitled to the possession of the land in question as the registered owner thereof.

Wherefore, the decision appealed from is affirmed, with costs against appellant Adolfo Magdangal.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[1] Under sec. 40 of the old Code of Civil Procedure, all actions for recovery of real property prescribed in 10 years, excepting only actions based on continuing or subsisting trusts that were considered by sec. 38 as imprescriptible. As held in the case of Diaz vs. Gorricho, 103 Phil., 261; 54 Off. Gaz., [37] 8429, however, the continuing or subsisting trusts contemplated in sec. 38 of the Code of Civil Procedure referred only to expressed unrepudiated trusts, and did not include constructive trust (that are imposed by law) where no fiduciary relation exists and the trustee does not recognize the trust at all.

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