

REMBERTO SOLIDUM YBANEZ, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF ALEJO DE LA CERNA, PLAINTIFF, VS. INOCENCIO DE LA CERNA, NICOLAS VILLACERAN.*G.R. No. L-27415. November 28, 1969*

Ponente: CONCEPCION, C.J.

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Appeal from an order of dismissal of the Court of First Instance of Cebu.

As special administrator of the estate of Alejo de la Cerna, deceased, plaintiff Remberto Solidum Ybanez commenced this action, against Inocencio de la Cerna, Nicolas Villaceran and Golden Star, on February 21, 1961. In an amended complaint, filed on April 14, 1961, plaintiff alleged, inter alia, that Alejo de la Cerna was the registered owner of lot No. 5313 of the Cadastral survey of Cebu, with an area of 2,030 square meters, covered by OCT No. 1506 of the Register of Deeds of Cebu; that, conspiring and cooperating with one another, as well as with fraudulent intent and through misrepresentations, on September 9, 1959, defendants Inocencio de la Cerna and Nicolas Villaceran, succeeded in securing the signature of Alejo de la Cerna to a document purporting to be a deed of sale of said lot to Nicolas Villaceran for the sum of P5,000, although its assessed value for tax purposes is P8,000 and its actual market value is more than P20,000; that this "sale" is simulated, fictitious and without any consideration; that, on March 28, 1960, said defendants mortgaged the lot to Maria P. Veloso for P12,400; that, in furtherance of their scheme to defraud the estate of Alejo de la Cerna, on October 28, 1960, said defendants sold the property, for P3,600, subject to said mortgage, to defendant Golden Star; that this registered partnership had acted in bad faith in buying said lot, its manager, Fruto Quinanola, having been informed, prior thereto, of the defect in the title of Nicolas Villaceran; that these transactions were made possible because said OCT No. 1506 and other documents, as well as personal properties of Alejo, were in the possession of Inocencio de la Cerna for safekeeping, he being the administrator of the properties and business of Alejo de la Cerna; and that his other properties, worth over P200,000, had been similarly disposed of by Inocencio de la Cerna, in view of which three (3) civil cases and one (1) criminal case for estafa have been filed against the latter. Plaintiff, accordingly, prayed that the deed of sale in favor of Nicolas Villaceran, and that subsequently executed in favor of Golden Star, be declared null and void, and that defendants Inocencio de la Cerna and Nicolas Villaceran be ordered to redeem the mortgage in favor of Maria P. Veloso, as well as to pay the costs.

Said three (3) defendants seasonably filed their respective answers, admitting some allegations of the complaint and/or amended complaint and setting up special defenses and counterclaims. Subsequently, or on December 17, 1962, appellants herein, namely, Andres, Toribio, Juanita, and Escolastica, all surnamed de la Cerna, and Pablo Mendoza and Teofilo Quijano, filed, in the case at bar, a complaint in intervention alleging therein that, during his lifetime, Alejo de la Cerna was the administrator of the properties he owned in common with his brother and sister, Marcelo and Escolastica, both surnamed de la Cerna; that intervenors Pablo Mendoza and Teofilo Quijano are the natural children and sole heirs of Alejo de la Cerna; that intervenors Andres, Toribio and Juanita, all surnamed de la Cerna, are children of said Marcelo de la Cerna, now deceased; that, in Civil Case No. R-5782 of

the Court of First Instance of Cebu, which was instituted by intervenors Pablo Mendoza and Teofilo Quijano against Alejo de la Cerna, for the recognition of said intervenors as his natural children, decision was rendered, on July 31, 1959, compelling Alejo de la Cerna to acknowledge Pablo Mendoza as his natural child; that, fearing that Pablo Mendoza and Teofilo Quijano might eventually inherit the properties of Alejo de la Cerna, on September 9, 1959, or about forty (40) days after the rendition of said decision, the latter and defendant Inocencio de la Cerna connived, conspired and cooperated with each other to cause to be executed a fictitious deed of sale of Lot No. 5313, in favor of defendant Nicolas Villaceran, for an alleged price of P5,000, despite the fact that the actual value of the land is about P2Q,000; that, after mortgaging said lot to Maria P. Veloso, for P12,400, on March 28, 1960, to further defraud the estate of Alejo de la Cerna and intervenors herein, defendants Inocencio de la Cerna and Nicolas Villaceran, acting with the same purpose, sold Lot No. 5313 to Golden Star, for the sum of P3,600, subject to said mortgage; that, despite all these transactions, neither Nicolas Villaceran nor Golden Star has taken physical possession of said lot, which is being held by intervenor Escoiastica de la Cerna; that intervenors' counsel had advised the manager of Golden Star, verbally and in writing, not to buy said lot, informing him that either the plaintiff or the intervenors herein would file a civil action in connection therewith; and that, this notwithstanding, Golden Star bought said Lot No. 5313, in disregard of the advise thus given by counsel for the intervenors. The intervenors prayed, therefore, that judgment be rendered in their favor and against the plaintiff and the defendants, declaring null and void the deed of sale executed by Alejo de la Cerna in favor of Nicolas Villaceran, and the deed of sale executed by the latter in favor of Golden Star, as well as ordering defendants Inocencio de la Cerna and Nicolas Villaceran to redeem the mortgage in favor of Maria P. Veloso, and to pay attorney's fees and the costs.

About two (2) years later, plaintiff filed a motion to dismiss, upon the ground - in the language of the order appealed from - that "due to the recent events he can no longer substantiate his claim because of lack of witness." Notwithstanding the opposition thereto of the intervenors, the Court of First Instance of Cebu granted the motion and dismissed "the complaint and counterclaim . . . without prejudice to the filing of a proper action by the intervenors if they desire." Hence, this appeal by the intervenors.

Upon a review of the record, We find that the lower court has erred in issuing the order appealed from and that the same should, accordingly, be set aside. In this connection, it should be noted that plaintiff's complaint assails, as fictitious or simulated, and, hence, null and void ab initio or non-existent, the sale by Alejo de la Cerna to Nicolas Villaceran and that purportedly made by the latter to Golden Star, which was allegedly aware of the flaw in Villaceran's title, and that plaintiff's allegations to this effect were substantially reproduced in the complaint in intervention, although the latter avers that Alejo de la Cerna shared in the fraudulent intent of Nicolas Villaceran. What is more, said allegations were buttressed by those made in the complaint in intervention about the decision requiring Alejo de la Cerna to acknowledge Pablo Mendoza as his natural child and the fact that the avowed sale to Villaceran took place forty (40) days after the rendition of said decision, or soon after it had become final, if not before it had acquired that status. Under the foregoing circumstances, it is clear to Us that the interest of justice, equity and fair play, as well as that of all parties concerned, demand a judicial determination, and an early one, of the questions thus raised.

It is true plaintiff alleged, in his motion to dismiss, that "he can no longer substantiate his claim because of lack of witness." The intervenors' opposition thereto bespeaks, however, a feeling of confidence in their own ability to establish the allegations of their complaint in intervention. Indeed, pursuant to Art. 1387 of our Civil Code, "(a)lienations by onerous title are . . .presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued,"[1] and the disputed sales apparently fall under such category. The aforementioned presumption is, moreover, bolstered up by the allegation, in plaintiff's complaint, to the effect that, prior thereto, Inocencio de la Cerna had disposed of other properties of

Alejo de la Cerna worth P200,000. Although the order complained of is "without prejudice to the filing of a proper action by the intervenors if they desire," it is not disputed that their complaint in intervention is not such a "proper action." It being so, We see no reason why they should, in effect, be required to file another one, if they wish to press their claim. Besides, under the alternative given to them by the lower court, the seven (7) years that have elapsed, since the filing of said complaint, would be completely wasted. In short, We find, in the order appealed from, nothing to commend it, either legally or morally.

WHEREFORE, said order should be, as it is hereby set aside and the case at bar is, accordingly, remanded to the lower court, for further proceedings, in conformity with this decision, without special pronouncement as to costs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando and Teehankee, JJ., concur.

Barredo, J., concurs in a separate opinion.

[1]Italics supplied.

CONCURRING

BARREDO, J.,

I concur in the foregoing decision.

At the same time, I would like to take this opportunity to express my opinion on the procedural question directly involved here and which quite often is being discussed among members of the bar. As I see it, what happened in this case is simply this: After the court a quo had allowed the appellants to intervene by filing their own complaint in intervention, which, incidentally, alleges practically the same facts as those in the complaint except that they are made the cause of action of the intervenors in their own favor, because of additional circumstances along that sense, the plaintiff moved to dismiss his own complaint and because of said motion, the court dismissed the whole case, including the complaint in intervention, over the opposition of the intervenors. I agree with the Chief Justice that such dismissal of the intervention is erroneous.

To my mind, an intervention, once allowed, is an action in itself, when such intervention is by a party who alleges in the complaint in intervention a cause of action against the defendant distinct and different from albeit related to that of the plaintiff and, as such, should be allowed to pursue its own course independently of that of the plaintiff. The purpose of intervention is to reduce multiplicity of suits by allowing parties whose interests are related to those in a litigation to be settled and determined within the same proceeding, provided the intervention will not unduly prejudice the fluid course of the original action. Such being the case, a complaint in intervention involving a distinct claim against the defendant which is related to the claim of the plaintiff cannot be considered as subordinated to the fate of the plaintiff's action; the intervention has a life of its own and there is absolutely no

reason why the intervention should be dismissed just because the complaint is dismissed, particularly, when the latter dismissal is asked by the plaintiff before trial, as in the case at bar.

It is true that the defendant is thus compelled to litigate with the intervenor. What is wrong with that? On the contrary, it is to the best interests of justice that since the matter is already before the court, the same should be determined then and there, thereby avoiding the institution of a new action with its consequent additional inconveniences and expenses. Of course, it is entirely a different matter if the interests of the plaintiff and the intervenor are common.

I am not unmindful of the rulings of the Supreme Court in *Garcia, et al. vs. David, et al.*, 67 Phil. 279; *Reliance Commercial Enterprises, Inc. vs. Board of Tax Appeals*, G. R. No. L-6997, November 18, 1955, (97 Phil. 1001) and *Clareza vs. Rosales*, 2 SCRA 455, in which last case, I appeared as counsel for the intervenor. In brief, it was held in said cases that "fundamentally, intervention is never an independent action, but is ancillary and supplemental to an existing litigation" and that "the right of an intervenor should merely be in aid of the right of the original party (and) as this right has ceased to exist, there is nothing to aid or fight for. So the right of intervention has ceased to exist." I must point out, however, that the remarks along this line in the *Garcia* case were obiter, since the only issue before the court there was whether or not the children of the deceased husband of the defendant had sufficient interest in the litigation which was for the recovery of the value of the promissory note signed and delivered by a third party in behalf of said defendant and the court held in the negative because at best, the interests of the said parties were inchoate, contingent and a mere expectancy and not "actual and material, direct and immediate." As to the case of *Reliance Commercial Enterprises, Inc.*, the reported passage reading thus:

"Petition for review of the decision of the Board of Tax Appeals dismissing not only the petition for review but also the complaint in intervention filed by petitioner. The main issue involved in this appeal is whether the complaint in intervention should be given due course by the Board of Tax Appeals notwithstanding the dismissal of the petition for review filed by the consignee. Held: It should be noted that petitioner filed its complaint in intervention before the Board of Tax Appeals merely to assist the consignee in securing the reversal of the decision of the Commissioner of Customs so that the goods seized may be released to said consignee. Petitioner did not ask that the goods be released in its favor nor state that it had an interest of its own different from that of the consignee. Petitioner should have intervened in the proceedings before the customs authorities so that it could have personality and legal standing therein. But petitioner only sought to intervene when the case reached the Board of Tax Appeals. Its intervention therefore became merely ancillary and subordinate to the appeal of the consignee. As such its right to continue has to yield once the appeal is dismissed, as was done in the present case.

"Decision affirmed."

precisely makes it clear that the matter could have been differently viewed had the *Reliance Enterprises Inc.* intervened in the proceedings before the customs authorities to ask that the goods in question be released in its favor instead of intervening only in the Court of Tax Appeals to aid the consignee *Quan Kee Chauk & Co.* get the release for itself, from which it can be inferred that if the *Reliance Enterprises Inc.* had made a timely intervention in its own favor, again, the ruling could have been otherwise. In the *Clareza* case, although *Zamora's* intervention was not allowed as such, the action was ordered continued with *Zamora* being substituted as plaintiff.

I am, therefore, of the considered opinion that in spite of what other remarks may appear in said decisions, the room is still open for a ruling that if a party is allowed, as in the case at bar, to intervene with a claim of his own separate from that of the plaintiff but related thereto and founded practically on the same set of facts and the same legal provisions and/or principles of law, the dismissal of the plaintiff's action need not carry as a consequence the

dismissal of the complaint in intervention and that in the interest of justice and to avoid multiplicity of suits, the proceedings should be allowed to proceed to its logical conclusion between the intervenor and the defendant, particularly where, as in this case, the issues between these parties have already been long before joined, the plaintiff having filed the motion to dismiss two years after the filing of the pleadings aforementioned. I feel very strongly that this is the more salutary rule.

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