

JOSE SALCEDO QUIMPO, PETITIONER, VS. CATALINO DE LA VICTORIA AND FRANCISCA O. DE LA VICTORIA, RESPONDENTS.

G.R. No. L-31822. July 31, 1972

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

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

Petition to review the following orders of the Court of First Instance of Davao, 16th Judicial District, Branch II, in its Civil Case No. 6473, entitled Catalino de la Victoria, et al. vs. Jose Salcedo Quimpo: order of 29 July 1969 denying defendant - petitioner's motion to dismiss the complaint for forcible entry for lack of merit, and granting the writ of immediate execution of the City Court decision of 16 January 1969[1] ; order of 16 August 1969, denying defendant-petitioner's motion for reconsideration thereof[2] ; and order of 12 November 1969 dismissing the defendant-petitioner's appeal from the aforesaid judgment of the City Court.[3]

The facts which led to the issuance of the disputed orders follow:

On 2 May 1968, plaintiffs-respondents filed a complaint against defendant-petitioner with the Court of First Instance of Davao, Branch I, docketed therein as Civil Case No. 6005, for quieting of title and recovery of possession with damages.[4]

On 28 June 1968, plaintiffs-respondents filed another case against defendant - petitioner with the City Court of Davao City (Civil Case No., 1299-B) for forcible entry[5] over the same parcel of land, subject-matter of Civil Case No. 6005, supra. Plaintiffs-respondents prayed in the later case for the court to order defendant-petitioner --

"* * * to vacate the premises and deliver the possession thereof to the former, and ordering defendant to pay the plaintiffs the amount of P500.00 a month as rental and the same to begin from the later part of March, 1968 until possession thereof shall be delivered to the plaintiffs, and the amount of P500.00 as attorney's fees. * * *."

In a motion to dismiss dated 13 July 1968,[6] defendant-petitioner sought the dismissal of the complaint for forcible entry alleging the pendency of Civil Case No. 6005; but the City Court, in its order of 29 November 1968, denied the said motion "for the reason that there is no identity of rights asserted and relief prayed for and for the further reason that it does not appear that any judgment which would be rendered on the other action will amount to resadjudicata in the herein case." [7] The same court order set the case for hearing on 12 December 1968.

On 12 December 1968, defendant-petitioner was declared in default for failure to file his answer to the forcible entry case and the City Court set the reception of plaintiffs-respondents' evidence for the following day. On 16 January 1969 the same court rendered its decision —

"* * * ordering the defendant * * * to vacate the premises in question and deliver possession thereof to the plaintiffs; to pay * * * the sum of FIVE HUNDRED PESOS (P500.00) a month as rental and the same to commence from March, 1968 until possession thereof shall be delivered to the plaintiffs; and to pay the costs."

Defendant-petitioner then moved for the reconsideration of the aforesaid order of 29 November 1968 denying his

motion to dismiss the complaint for forcible entry, and also the decision of 16 January 1969. However, his motion was denied in the City Court order of 4 March 1969.[8]

Defendant-petitioner appealed to the Court of First Instance and it was docketed therein as Civil Case No. 6437. In a motion dated 5 July 1969, defendant-petitioner reiterated his arguments for the dismissal of the complaint for forcible entry as stated in his earlier motion in the City Court. In the meantime, plaintiffs-respondents moved for the issuance of an order for the immediate execution of the City Court decision of 16 January 1969. On 29 July 1969, the court *a quo* denied the motion to dismiss of 5 July 1969 for lack of merit, and at the same time granted the immediate execution of the City Court judgment. His motion for reconsideration having been denied, and his appeal dismissed, defendant filed the herein petition, claiming that the lower court

1. Did not acquire jurisdiction over the action for forcible entry, the verification of the corresponding complaint being void;
2. Erred in not dismissing the complaint for forcible entry filed a month after an action for recovery of possession and quieting of title had been filed by respondents against petitioner over the same cause of action, the same subject matter and the same parties;
3. Erred in granting the issuance of immediate execution before resolving the issue of the pendency of another action between the same parties over the same subject matter;
4. Erred in awarding P500.00 monthly rental in the complaint for forcible entry without any evidence as against the claim of P300.00 monthly rental in the action for recovery of possession and quieting of title; and
5. Erred in dismissing the appeal of petitioner who has been declared in default, without considering that a legal issue on the ruling of the inferior court denying the motion to dismiss is raised.

It is pointed out in the first assigned error that since the verification in the complaint for forcible entry does not comply with Section 6, Rule 7, of the Revised Rules of Court, the complaint is void; hence, the City Court, and subsequently the court *a quo*, did not acquire over the said case.

The verification in question states:

“* * * * *

"I, CATALINO DE LA VICTORIA, under oath, allege: that I am one of the plaintiffs in the above-entitled case; that I have read the allegations thereof; that they are true and correct."

* * * * *

Section 6, Rule 7, Revised Rules of Court provides:

* *. Verification. — A pleading is verified only by an affidavit stating that the person verifying has read the pleading and that the allegations thereof are true of his own knowledge.

Verification based on information and belief, or upon knowledge, information and belief shall be deemed insufficient."

Catalino de la Victoria, one of the plaintiffs (now respondents) clearly referred to the allegations in the complaint as having been read by him. However, while he stated that "they are true and correct," he omitted to state that said conclusion was reached of his own knowledge. The latter detail, however, is logically inferable since affiant was a party and it does not appear that he was verifying upon information and belief. If petitioner entertained doubt about the true character of the verification, he should have asked that it be made more definite.

Moreover, even if. We should find the verification insufficient, that insufficiency would not render the complaint for forcible entry, or the whole proceedings in the court below, void. This Court already held in several decisions that the requirement regarding verification is not jurisdictional, but merely formal. Thus, in *Villasanta vs. Bautista*, L-30874, 26 November 1970, 36 SCRA 160, 170-171, this Court ruled:

"5. Finally, a word on respondents' insistence on their contention, citing inapplicable appellate court decisions, that 'a pleading which lacks the required verification is fatal (sic) and does not confer jurisdiction.' Respondents' contention that petitioner Villasanta's (the corporation's) verification of the petition 'that the allegations therein contained are true and correct' is 'insufficient' for non-compliance with the Rule's requirement that affiant state the allegations are 'true of his own knowledge' is untenable. The Court has consistently held that the reglementary phrase 'true of his own knowledge' is not a talismanic formula, the use of which would insure the granting of a petition and non-use whereof would result in a decree of dismissal. It has ruled absence of verification not to be fatally defective in meritorious cases.' What is important is that the object of the Rule, to insure good faith and veracity in the material averments of the petition, be complied with, so that the court may properly act on the case. Here, the petition has complied with the requirement in form and in substance. Villasanta in effect certified of his own knowledge to the truth of the petition as a whole, but with reference to the averments in paragraph 8 of the petition as to respondents' acts of intrusion and coercion at the concession area on 15 August 1969, specifically submitted with the petition the affidavits of on — scene witnesses Cone and two other company officials attesting thereto of their own knowledge."

Thus, while it is true that Section 1, Rule 70, of the Revised Rules of Court requires the verification of the complaint for forcible entry, the insufficiency of the same, or its being defective, is not fatal to the jurisdiction of the City Court or that of the court a quo to which the case was later appealed.

This Court went to hold further in *Oshita vs. Republic*,[9] that —

"* * * While the petition now before Us was not verified, it was, however, subscribed and sworn to by the petitioner, and We believe that the lower court did not commit a reversible error when it denied the motion to dismiss the petition upon the ground of lack of jurisdiction. The jurisdiction of the court was not affected by the absence of the proper verification of the petition. It may be stated here, though, that the lower court should have required appellee to have her petition verified before setting the case for hearing, in order to have the petition conform with the rule." [10]

It will also be noted that defendant-petitioner raises the question of jurisdiction for the first time in this appeal, hence, he is now barred by laches. This Court ruled in *Tijam vs. Sibonghanoy*[11] that-

"* * * a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated-obviously for reasons of public policy.

Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court * * *. And in *Littleton vs. Burges*, 16 Wyo, 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty." [12]

Defendant-petitioner invoked the jurisdiction of the City Court when it sought to dismiss the complaint for forcible entry on the ground that the cause of action in this case is the same as in Civil Case No. 6005, supra. After defendant-petitioner was declared in default, and the decision rendered against him, said party again

submitted to the said jurisdiction by filing a motion for reconsideration of said decision. His motion having been denied, he appealed the case to the court aquo where he also filed a motion to dismiss the forcible entry case on the same grounds stated in a similar motion before the City Court. Thus, defendant-petitioner voluntarily invoked and submitted himself to the jurisdiction of both courts. Having failed to obtain the relief sought from these courts, he can not now question the jurisdiction invoked.

With respect to the second assignment of error, one of the grounds for a motion to dismiss under Rule 16 of the Revised Rules of Court is the pendency of another action between the same parties for the same cause.[13]

In order that this ground may be availed of there must be, between the action under consideration and the other action, (1) identity of parties, or at least such as representing the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity on the two preceding particulars should be such that any judgment which may be rendered on the other action will regardless of which party is successful, amount to resadjudicata in the action under consideration.[14]

While there may be identity of parties and subject matter in the forcible entry case and Civil Case No. 6005, for quieting of title, the rights asserted and the relief prayed for in the said cases are not the same. In the former case, the legal right claimed is possession, while in the latter case, the legal right asserted is ownership.

We can not assent to the proposition that the motion to dismiss should have been granted by the Municipal Court of origin, and sustained on appeal by the Court of First Instance, for the reason that the question of ownership was necessarily involved in the action for forcible entry (not for unlawful detainer), as is proved by the admitted pendency of the prior suit for quieting of title in the Court of First Instance. While the fact that triggered both actions was appellant Quimpo's forcible invasion of respondent's titled property in March of 1968, on the pretext that the part of respondent's land forcibly entered and occupied by him was part of the area covered by his pasture permit from the Bureau of Forestry, still the causes of action in the two cases are distinct from each other. In the action to quiet title the question involved is whether the pasture permit could include property for which O. C. T. No. P-2385 of the Registry of Deeds of Davao province had been previously issued to appellees de la Victoria. But in the forcible entry case, the issue is whether, assuming that Quimpo's pasture permit were valid, he had the right to forcibly eject the prior occupants, who were appellees de la Victoria, even destroying their improvements. In other words, in the quieting of title case, the Court must decide who had the better right. In the Municipal court, the issue was, in effect, whether an owner can take the law in his own hands. That he can not do so seems incontestable: it is not so much a question of possession as it is one of law and order. To require appellees de la Victoria to acquiesce to the high-handed conduct of appellant Quimpo, and to submit to his tour de force, until the superiority of their Torrens Title is finally adjudged, after God knows how many years, is undoubtedly against all justice and equity.

It is contended in the next assigned error that immediate execution of the City Court decision in the forcible entry case should not have been panted pending a resolution of the issue of the pendency of another action between the same parties over the same subject matter.

The contention is without merit. Section 8, Rule 70, of the Revised Rules of Court not only authorizes but also requires the immediate execution of a judgment in plaintiffs' favor. The said provision, taken in relation to that of section 10 of the same Rules, is mandatory,[15] the only exception being when the delay is due to fraud, accident, mistake or excusable negligence.[16] The purpose of the law is to prevent further damages to him caused by the loss of his possession.[17] However, defendant may stay execution (a) by perfecting his appeal and filing a supersedeas bond; and (b) by depositing from time to time, with the Court of First Instance, during the pendency of the appeal, the amount or rents or the reasonable value of the use and occupation of the property as fixed by the

justice of the peace or municipal court in its judgment.[18]

While defendant-petitioner perfected the appeal, he did not file a supersedeas bond and deposit the monthly rentals of P500.00 monthly fixed by the City Court. In the absence thereof, he can not be heard to complain against the immediate execution of the judgment which is legally sanctioned.

Defendant-petitioner likewise questions the amount of P500.00 as monthly rental of the subject parcel of land fixed by the City Court.

The question of rental is a factual issue, and in the absence of proof to show that the said court abused its discretion in awarding the same, We are not inclined to disturb said finding. This award, however, may be raised as a defense in Civil Case No. 6005 for quieting of title where rental is also prayed for by plaintiffs-respondents for the possession of the land as incident to their claim of ownership.

The issues raised against the decision of the City Court of Davao being unmeritorious, as previously shown, it becomes irrelevant to discuss the final question of whether defendant-petitioner can appeal the judgment of the inferior court which declared him in default.

WHEREFORE, finding no reversible error in the orders appealed from, the same are hereby affirmed, with costs against defendant-petitioner.

Concepcion, CJ., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, and Antonio, JJ., concur.

[1] Page 18, Rollo.

[2] Page 20, id.

[3] Page 21, id.

[4] Page 22 id.

[5] Page 25, id.

[6] Page 4, Record on Appeal.

[7] Page 7, id.

[8] Page 16, id.

[9] Oshita vs. Republic L-21180, 31 March 1967, 19 SCRA 700.

[10] Italics supplied.

[11] L-21450, 15 April 1968, 23 SCRA 29.

[12] Italics supplied.

[13] See Section 1(3), Rule 16.

[14] Comments on the Rules of Court by Moran, Vol. I, pages 188 489 1970 Ed., citing cases.

[15] Arcilla vs. Del Rosario, No. 49038, 29 Oct. 1943, 74 Phil. 445, citing Sumintac vs. Court of First Instance of Rizal, No. 47830, 8 April 1941, 71 Phil. 445.

[16] Cunanan vs. Rodas, Nos. L-1400, L-1406 and L-1407, 30 July 1947, 78 Phil 800 cited in Comments on the

Rules of Court by Moran, Vol. 3, page 329, 1970 Ed.

[17] Comments on the Rules of Court by Moran, Id., Id., Id., citing cases.

[18] Id., Id., Id., Id., Id., citing cases.

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