

ISAAC CAPAYAS, ETC., PETITIONER, VS. THE COURT OF FIRST INSTANCE OF ALBAY, ET AL., RESPONDENTS.

G.R. No. L-475. August 31, 1946

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for mandamus to compel the respondent Court of First Instance of Albay to admit the so-called amended third-party complaint filed by petitioner against several persons named therein, on the ground that the refusal of the respondent court to admit the same constitutes an unlawful neglect of the performance of a duty specifically enjoined upon it by law, pursuant to Rule 12 of the Rules of Court, sections 1 and 2 of which read as follows:

"SECTION 1. Claim against one not a party to an action.—When a defendant claims to be entitled against a person not a party to the action, hereinafter called the third-party defendant, to contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim, he may file, with leave of court, against such person a pleading which shall state the nature of his claim and shall be called the third-party complaint.

"SEC. 2. Motion for leave.—Before the service of his answer a defendant may move ex parte or, after the service of his answer, on notice to the plaintiff, for leave as third-party plaintiff to file a complaint against a third-party defendant."

Petitioner's contention is untenable.

First. Because from the said provisions it clearly appears that it is not a court's duty especially enjoined by law to admit a third-party complaint. Were it a ministerial duty, it would not be necessary for the defendant to obtain leave of court to file such a complaint; because if the court has the duty to admit, the defendant has the correlative right to file, a third-party complaint without necessity of such leave. Of course, when the law says that a third-party complaint may be filed with leave of court, it refers to a complaint that alleges facts which prima facie show that the defendant is entitled against the third-party defendant to contribution, etc., etc. Otherwise the court can not legally grant leave to a defendant to file it, because it would not be a third-party complaint.

In the case of *General Taxicab Assn., Inc. vs. O'Shea*, U. S. Court of Appeals, Dist. Court of Columbia, January 15, 1940, the court said: "Against this background of statutes and decisions, the Supreme Court, in framing Rule 14 (a), chose the language 'a defendant may move * * * for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action, * * *' and the language 'if the motion is granted. * * *' We think there can be no doubt that it was thus intended to make the impleading of third parties in the Federal practice discretionary with the trial court. See 1 Moore, op. cit., supra, 741: 'Whether a party to an action shall be allowed to implead an additional party rests in the discretion of the court. This is in accord with the English, New York and Wisconsin practices.' " (2 Fed. Rules Service, 14a.15, Case No. 1.)

Secondly, Because the respondent court would have committed an error if it had admitted the so-called third-party complaint filed by the petitioner against Isidora Lladoc, Fulgencio Lladoc and Gregorio Navera, since the facts

alleged therein do not show that the petitioner is entitled to indemnity against them "in respect to plaintiff's claim." The test to determine whether the claim for indemnity in a third-party complaint, "in respect to plaintiff's claim" is, whether it arises out of the same transaction on which the plaintiff's claim is based, or the third-party's claim, although arising out of another or different contract or transaction, is connected with the plaintiff's claim.

According to the decision in the case of *Crim vs. Lumberman's Mutual Casualty Co.*, (26 Fed. Supp., 715 [1 Fed. Rules Service, 14all, Case No. 1]), the test to determine when a third-party defendant may be impleaded is whether he could have been joined originally as a defendant by the plaintiff. But this could be applied only if there could be asserted against the defendant as the third-party defendant, jointly and severally or in the alternatives, any right to relief arising out of the same transaction. For example in an action against the surety on a bond, the surety may bring in as a third party defendant, the principal who had agreed to indemnify the surety, because the surety's claim arises out of the same transaction (*United States vs. United States Fidelity and Guaranty Co. vs. Rolling*, U. S. Dist. Ct, D. Minn., February 1, 1940, 2 Fed. Rules Service 14a.222, Case No. 1). The above test does not cover all cases in which impleading a third-party may be and have been allowed, which are also covered by the test we have laid down in the previous paragraph. Under Rule 14 of Federal Rules of Civil Procedure, which corresponds to our Rule 12, the bringing in of a third-party defendant is proper if he would be liable to the plaintiff or to the defendant for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction. So in the case of *Carbola Chemical Co., Inc. vs. Trundle Engineering Co.* (U. S. Dist. Ct., S. D. N. Y., December 26, 1942), it was held that in an action for breach of contract to render engineering services and to survey a plant, the defendant was allowed to bring as a third-party defendant, the manufacturer which sold defendant's equipment to the plaintiff (7 Fed. Rules Service, 14a.11, Case No. 1). And in a negligence action by the purchaser of a confection in which it is alleged that the confection contained a foreign object, the defendant may bring in the person who supplied him with the constituent containing the foreign object, as a third-party defendant (*Saunders vs. Southern Dairies, Inc.*, U. S. Dist. Ct., District of Columbia, November 6, 1939 [2 Fed. Rules Service, 14a.226, Case No. 3]).

Another test, provided for by section 4, Rule 12, of our Rules of Court, is whether the third-party defendant may assert any defenses which the third-party plaintiff has or may have to the plaintiff's claim. If he may properly assert such defenses, then he is a proper third-party defendant; otherwise he is not and the claim against him can not be considered as a third-party complaint.

Petitioner's claim for indemnity against Lladoc and others does neither arise out of the same transaction or the alleged petitioner's tortious acts on which plaintiff's action is based, nor is it based on a different transaction but connected with the plaintiff's claim. Plaintiff's claim against petitioner and his co-defendants is, according to the allegations in the complaint, (a) to recover from them damages for the palay which have been illegally harvested from certain lands belonging to the plaintiff, and (b) to enjoin them from entering said lands and disturbing and molesting the plaintiff's right of ownership and possession thereof. Whereas the petitioner's claim against Isidora Lladoc and others is to recover from the latter the value of the three parcels of land and their fruits amounting to P3,200 plus legal interest, for having said Isidora, as administratrix of the intestate estate of Ceferino Guanzon, sold said lands in 1927 without authority of the court to Domingo Imperial, from whom said lands were acquired by the plaintiff. And in the present case, it is clear that if the so-called third-party complaint be allowed, Isidora Lladoc and others named therein as third-party defendants could not assert any defense which the petitioner has or may have to the plaintiff's claim. Lastly. Because the causes of action in this complaint against the petitioner are that "on the month of April, 1944, the defendants by force, intimidation and threat * * * entered upon the aforesaid lands (described in the complaint) and harvested and collected * * * 400 cavanes of palay produced therefrom"; and that "the defendants persist in their threat to enter upon said lands with the purpose of disturbing and molesting the plaintiff's right of ownership and possession thereof." From these allegations it appears that the

petitioner is being sued in his personal capacity, and not as administrator of the intestate estate of Ceferino Guanzon; because he was appointed as administrator only on July 1, 1944, according to petitioner's Exhibit A; and it is not within the powers and duties conferred by law upon an administrator to do the acts complained of. Being sued in his individual capacity, it is evident that the petitioner can not file, in his capacity as administrator of the intestate estate of Ceferino Guanzon, a third-party complaint against Isidora Lladoc and others. It requires no elaborate argument to show that, under the provisions of section 1, Rule 12, a defendant can not file a third-party complaint in a different capacity in which he is being sued; otherwise his claim against the third-party defendant would not be in respect to plaintiff's claim. In other words, the would be third-party defendants can not be made liable to the petitioner for all or part of the plaintiff's claim against the petitioner. Petition is therefore denied with costs against the petitioner. So ordered.

Moran, C. J., Paras, Pablo, Perfecto, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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