

**PEDRO PAESTE AND FELIX CARPIO, PLAINTIFFS AND APPELLANTS,  
VS. RUSTICO JAURIGUE, DEFENDANT AND APPELLEE.***G.R. No. L-5711. December 29, 1953*

Ponente: REYES, J.

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On June 28, 1951, Pedro Paeste and Felix Carpio brought an action in the Court of First Instance of Quezon Province against Rustico Jaurigue for the annulment of two documents, copied in the complaint, which, it is alleged, Felix Carpio and his son Maximo Carpio had been compelled to sign through force and intimidation and against their will. One of the documents purports to be an affidavit executed by Maximo Carpio on March 12, 1945, certifying to the fact that his father, Felix Carpio, was indebted to defendant in the sum of P3,900 and that his father had agreed to execute a deed conveying 4 hectares of coconut land by way of sale with pacto de retro to the said defendant; while the other document purports to be a deed executed by Felix Carpio on May 3, 1945, conveying to defendant, by way of sale with pacto de retro, a piece of land in barrio Ilayang Rizal, Unisan, Tayabas, for the sum of P1,000. The complaint also alleges that, since the execution of the documents above referred to, defendant with the aid of armed men has repeatedly entered another piece of land described as "lot No. 1488, Cad. 251" in the same barrio, which was in the possession of plaintiffs but different from the one mentioned in the documents in question, and against plaintiffs' will, gathered coconuts therefrom of the total value of P7,000. In addition to the annulment of the documents, plaintiffs, therefore, asked that defendant be sentenced to pay them the said sum of P7,000 plus P2,000 for damages and attorney's fees.

On motion of the defendant, the court dismissed the case on the grounds that plaintiffs' action had already prescribed, since "Under Article 1301 of the Spanish Civil Code of 1889 as well as under Section 43, Paragraph 3, of the Code of Civil Procedure and Article 1391 of the new Civil Code, an action for nullity in cases of intimidation or duress must be brought within 4 years from the date the cause of action accrued."

Plaintiffs asked for a reconsideration of the order of dismissal and, to meet the defense of prescription, also filed an amended complaint alleging that since the execution of the pacto de retro deed of May 3, 1945 by Felix Carpio, "defendant, with aid of armed men has continuously committed and employed threat, intimidation and duress against plaintiffs<sup>1</sup> and with warning to the latter not to bring this incident and matter to the proper authorities under pain of death."

But the court denied reconsideration and disallowed the amended complaint whereupon plaintiffs brought the case to the Supreme Court by way of appeal, alleging that the appeal involves a purely legal question.

Appellants contend that the lower court erred in not admitting their amended complaint and in holding that their action had already prescribed. Appellants are right on both counts.

Amendments to pleadings are favored and should be liberally allowed in the furtherance of justice. (Torres vs. Tomacruz, 49 Phil. 913). Moreover, under section 1 of Rule 17, Rules of Court, a party may amend his pleading once as a matter of course, that is, without leave of court, at any time before a responsive pleading is served. A

motion to dismiss is not a "responsive pleading." (Moran on the Rules of Court, vol. I, 1952 ed., p. 376). As plaintiffs amended their complaint before it was answered, the motion to admit the amendment should not have been denied. It is true that the amendment was presented after the original complaint had been ordered dismissed. But that order was not yet final for it was still under reconsideration.

As to the question of prescription, it is evident that, with the allegations in the amended complaint that the plaintiffs had executed the documents in question through force and intimidation, that defendant had been threatening plaintiffs with death if they took the matter to the authorities, and that these threats lasted until 1951, plaintiff's action does not appear to have prescribed, for, in these cases prescription does not begin to run until the party affected is perfectly free to go to court as he wishes. As Manresa says:

"El principio fundamental es, que comience la prescripcion cuando el vicio cesa, y, o se recobra la libertad cohibida, o se conoce la realidad ignorada o falseada. Por eso, tratandose de la violencia o intimidacion, comienza el plazo cuando cesan estas, cuando la libertad del contratante reaparece; de donde se deduce que si despues de cesar la intimidacion o violencia que arranco el consentimiento, se emplean otras para impedir el ejercicio de la action de nulidad solo cuando estas fuerzas o amenazas posteriores desaparecen, comienza a transcurrir el plazo, y que al ejercerse aquellas (cuya prueba siempre incumbe al que las sufre), se interrumpe la prescripcion comenzada." (8 Comentarios alCodigo Civil Español, Manresa, pags. 797-798).

We also observe that the original complaint claims damages for fruits gathered from 1945 to 1951 from land held by defendant but different from the one covered by the documents in question. Not all of this claim is barred by prescription.

In view of the foregoing, the order dismissing the case and rejecting the amended complaint is hereby set aside and the case remanded to the court below for further proceedings. With costs. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Jugo, Bautista Angelo and Labrador, JJ., concur.

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