

NARCISO SOLANCHO, PLAINTIFF-APPELLANT, VS. JOSEFA RAMOS AND ISMAEL CALDERON, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-20408. April 27, 1967

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from four orders of the Court of First Instance of Cagayan in Civil Case No. 1519 ?

- (1) Dated January 6, 1962, dismissing the complaint without costs;
- (2) Dated February 10, 1962, deferring the resolution of plaintiff's motion to reconsider said order of January 6, 1962 until after it is appraised of the action of the Bureau of Lands on plaintiff's free patent application;
- (d) Dated March 9, 1962, directing the District Land Office to investigate whether the land in question is really a private land; and issued the order of March 9, 1962 directing the District Land Office to investigate the status of the land.

On May 30, 1962, the lower court denied the motion to reconsider. Hence, the instant appeal.

It is contended by appellant that the lower court erred in issuing the order of dismissal because the motion to dismiss is based upon facts not alleged in the complaint. This contention is unmeritorious. A motion to dismiss under Rule 16 (formerly Rule 8) of the Rules of Court is not like a demurrer provided for in the old Code of Civil Procedure that must be based only on the facts alleged in the complaint. Except where the ground is that the complaint does state no cause of action which must be based only on the allegations in the complaint, a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint. (*Ruperto v. Fernando*, 83 Phil. 943; *Cabague v. Auxilio*, 92 Phil. 294; *Canete v. Madrigal & Co.*, G.R. No. L-17836, August 20, 1962)

It is also contended by appellant that the defendants-appellees failed to adduce evidence in support of their allegation that there is a pending administrative case concerning the land in question. Defendants-appellees have, however, attached a letter of the Bureau of Lands advising Josefa Ramos to file her protest and the written protest to their motion to dismiss, making it a part of their pleading and thereby rendering unnecessary the presentation thereof by the defendants.

Obviously, both parties as well as the trial court have missed the extent or meaning of the ground of the motion to dismiss as contemplated under the Rules of Court. It is a point which appears not to have been sufficiently considered.

As noted above, the defendants contend that the pendency of an administrative case between themselves and the plaintiff before the Bureau of Lands is a sufficient ground to dismiss the action. On the other hand, the plaintiff, believing that this ground as interposed by the defendants is sufficient ground for the dismissal of his complaint, filed a motion to withdraw his free patent application No. 1-6649.

This is not what is contemplated under the law because under section 1(d), Rule 16 (formerly Rule 8) of the Rules (4) Dated May 30, 1962, denying plaintiff's motion to reconsider said order of January 6, 1962.

On December 8, 1961, Narciso Solancho filed with the Court of First Instance of Cagayan a complaint against Josefa Ramos, Flaviano Ramos, Valentin Arios and Ismael Calderon, seeking the recovery of ownership and possession of a piece of land. The said complaint alleges that the plaintiff is the owner of the land in question; that he had been in possession of the same since time immemorial up to 1959 when the defendants, by means of force, violence, threats, strategy, stealth and intimidation, usurped and took possession of portion thereof; that the unlawful occupation by the defendants will deprive plain-tiff of the use and fruits of the same causing him to suffer damages; and that notwithstanding repeated demands they refused to vacate and surrender the possession thereof.

Accordingly, plaintiff prayed that judgment be rendered declaring him the owner of the land and, therefore, ordering the defendants to vacate it and surrender possession thereof to plaintiff; and condemning the defendants to pay, jointly and severally, actual and exemplary damages, plus attorney's fees and costs of suit.

Instead of answering the complaint, the defendants filed a motion to dismiss it on the ground that there is a pending administrative case between the plaintiff and defendant Josefa Ramos over the same parcel of land before the District Land Office, hence, the lower court acquired no jurisdiction over the action until the plaintiff had exhausted all administrative remedies. Attached to their motion is a letter of the Bureau of Lands advising Josefa Ramos to file her protest to the free patent application and her written protest thereto.

The lower court granted the motion to dismiss. There-upon, plaintiff moved that said order be reconsidered and set aside, for the reason, inter alia, that his free patent application had been withdrawn. An opposition to this motion was filed by the defendants. Before resolving the motion to reconsider, the lower court issued the above-men-tioned order of February 10, 1962. Thereafter, plaintiff filed a manifestation to the effect that his free patent application had been rejected by the Bureau of Lands, and calling for the resolution of the motion. Again, instead of resolving the motion for reconsideration, the lower court of Court, one of the grounds for the dismissal of an action is that "there is another action pending between the same parties for the same cause." Note that the Rule uses the phrase "another action". This, phrase should be construed in line with Section 1 of Rule 2, which defines the word action, thus ?

"Action means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong. Every other remedy is a special proceeding." (Underscoring supplied)

It is, therefore, very clear that the Bureau of Lands is not covered under the aforementioned provisions of the Rules of Court.

IN VIEW HEREOF, the orders appealed from are hereby reversed and set aside, and the record of this case should be, as it is hereby, remanded to the lower court for further proceedings. Costs against the appellees.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.
Castro, J., no part.

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