

**FELIPE RAYMUNDO, CESAR OBLIGACION, AND PEDRO GARCIA,
WHO DIED DURING THE PENDENCY OF THEIR APPEAL IN THE
HONORABLE COURT OF APPEALS, SUCCEEDED BY HIS WIDOW,
TRINIDAD ALTESA AND ...**

G.R. No. L-30887. December 24, 1971

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

In their brief which is partly quoted in the decision of the Court of Appeals in CA G.R. No. 35640-R, (pp. 39-43, rec. of L-30887), petitioners-appellants in L-30887, who are also plaintiffs-appellants in L-29754, claim that the factual background of these two cases now before US, is as follows:

x x x x x

"Lot 3 is owned, possessed, and occupied by the defendant Felipe Raymundo who is paying taxes thereon while Lot 2, same block, belongs to the defendant Pedro Garcia. Both defendants have their respective houses thereon and have been living and residing therein for more than thirty (30) years each.

x x x x x

"Before the last World War, the Filipino employees of the San Francisco del Monte, Inc. organized from exclusively among themselves a mutual aid association which they named "Tiyaga at Pagtitipid." The plaintiff and the two defendants above-named were among the members of that association.

x x x x x

"With its funds, the association purchased lots from the San Francisco del Monte, Inc. for resale to its members on the installment plan. Among the lots acquired by the said association are the two now in question. In turn, Lot 3 was purchased from the association by the herein defendant Felipe Raymundo while Lot 2 was bought by the defendant Pedro Garcia. Both were able to complete paying their respective lots before the aforesaid World War broke out. Not long after completing payments, the said war begun.

x x x x x

"This state of facts was known to the plaintiff Feliciano Felipe. He knew the defendants very well as they have been neighbors in San Francisco del Monte since boyhood; they had been co-workers in San Francisco del Monte Subdivision and they have been co-members in the association "Tiyaga at Pagtitipid". He knew also very well the two lots in question; he knew that the said lots have been purchased and fully paid for by the defendants. But he knew very well too that the said defendants have not as yet acquired their respective certificates of title over their respective lots.

"His knowledge of all these facts nurtured in him a selfish desire to appropriate the said lots for his own benefit. He then devised fraudulent means to accomplish his knave purpose. How did he do it?

"For Lot 3, Block 159, which belongs to the defendant Felipe Raymundo, the plaintiff-appellee employed the following devise:

"He gathered a group of his close relatives and friends, such as his own wife Faustina Contreras, his sister Ana Salonga, his brother-in-law Ernesto Salonga, his nephews and trusted friends who willingly connived with him and all of them made it appear in public instrument denominated "Deed of Quitclaim" that they were all pre-war members - even if they were not - of the association "Tiyaga at Pagtitipid" and in that instrument they allegedly quitclaimed to and in favor of the plaintiff Feliciano Felipe their supposed rights, interests, and participation in the said Lot 3, Block 159."

x x x x x x

"For Lot 2, Block 159, which belongs to the defendant Pedro Garcia, the herein plaintiff contrived a different cunning scheme, as follows: In another public instrument captioned 'Deed of Assignment' the said plaintiff allegedly as President of the association 'Tiyaga at Pagtitipid' allegedly assigned to his willing tool, Alfredo G. Villanueva, the said Lot 2, Block 159."

x x x x x x

"Armed with the 'Deed of Assignment' and the 'Deed of Quitclaim', Feliciano Felipe and Alfredo G. Villanueva, as plaintiffs, instituted in the Court of First Instance of Rizal (Quezon City Branch IV) an action for specific performance, docketed as Civil Case No. Q-6882, of the said Court, against the San Francisco del Monte, Inc., wherein the title to the two lots in question then still resided, to compel the said corporation to convey to the first (Feliciano Felipe) Lot 3, Block 159, and to the second (Alfredo G. Villanueva) Lot 2, the same block;

"The defendants in the present case, Felipe Raymundo and Pedro Garcia, owners of Lots 3 and 2, respectively, were not made parties in that action, despite the fact that the plaintiffs therein well knew that those lots are owned by the said Raymundo and Garcia and knew well that they have been in possession of their respective lots for more than 30 years already to the present; nor did these two ever acquire knowledge of the institution and prosecution of the said action until they have been brought to Court in the present case; they were thus never in a position to protect their respective rights in that action;

"The decision rendered in the said case ordered the defendant therein, San Francisco del Monte, Inc. to convey Lot 3, Block 159 to the plaintiff Feliciano Felipe and Lot 2, same block, to the plaintiff Alfredo G. Villanueva, the dis-positive portion of the decision reading as follows: (N.B. - this decision was rendered on March 14, 1963; p. 6, Petition for Review)

‘WHEREFORE, this Court finding that all the material allegations of the complaint have been substantiated, hereby orders the defendant (a) to execute the necessary final deeds of sale for Lot No. 20, Block 82, and Lot No. 3, Block 159, of the San Francisco del Monte Subdivision for the consideration of 1 peso per square meter leading to the issuance of separate titles in favor of plaintiff Feliciano Felipe xx xx (b) another final deed of sale and title for the same consideration of 1 peso per square meter for Lot No. 2, Block 159, in favor of plaintiff Alfredo G. Villanueva, married to Pura C. Villa-nueva, 2226-A Narra, Manila upon payment of the amount of P25.00 for each lot and without pronouncement as to costs.’

"The required deeds of conveyance were exe-cuted by the defendant San Francisco del Monte, Inc., as ordered in the decision. Pursuant to the said deeds, the Register of Deeds for Quezon City issued Transfer Certificate of Title No. 68207 to Feliciano Felipe for Lot 3, Block 159, and Transfer Certificate of Title No. 68296 to Alfredo G. Villanueva for Lot 2, same block.

"Feliciano Felipe then mortgaged Lot 3, Block 159, to the Rural Bank of San Juan, Rizal for P3,500.00, which mortgage is still in full force and effect to this day;

"Felipe's tool, Alfredo G. Villanueva, transferred back to the said Felipe Lot 2, Block 159 and the Register of Deeds for Quezon City issued Transfer Certificate No. 70981 for the said lot, in the name of the said Feliciano Felipe, who, in turn sold same to the spouses Simeon B. Samson and Brigida V. Samson who bought the same from Felipe even if they knew that the said lot belongs to the herein defendant Pedro Garcia who is in possession of the same for over thirty years already;

"Then after the lapse of 104 days from the sale of Lot 2, Block 159 to the spouses Samsons, Feliciano Felipe, who was no longer the owner of the said Lot 2, if the sale to the Samsons were genuine and true, nevertheless, instituted the present action for the recovery of the possession of the said lot from the herein defendant Pedro Garcia, on the theory that he is still the owner of the said Lot 2, x x x" (pp. 11-29, Brief of Defendants-Appellants in CA G.R. No. 35640; p. 28, rec., L-30887, underlining supplied).

G.R. No. L-30887

This is a petition for review of the judgment of the Court of Appeals in CA G.R. No. 35640-R, affirming in toto the decision rendered by the Court of First Instance of Rizal (Quezon City Branch IV) in Civil case No. Q-7668.

After securing titles in his name pursuant to the decision of the trial judge of Branch IV of the Quezon City Court of First Instance, as above intimated, respondent-appellee or defendant-appellee Feliciano Felipe filed on November 27, 1963 a complaint for the recovery of possession (accion publiciana) of two parcels of land with the Court of First Instance of Rizal, Quezon City Branch IV (Civil Case No. Q-7668), and prayed, among others, that herein petitioners-appellants (defendants in the lower court), who have been illegally occupying since 1953 and 1955, be ordered to vacate, Lots Nos. 2 and 3, Block 159, San Francisco Subdivision, covered by transfer certificates of title nos. 70981 and 68207, respectively, of the Office of the Register of Deeds of Quezon City (pp. 1-5, rec. on appeal).

On December 19, 1963, defendants filed their answer, denying the material allegations of the complaint, and alleging that they are the true owners of the lots respectively occupied by them (lot No. 2 by defendant Pedro Garcia and lot No. 3 by defendant Felipe Raymundo), having bought the same from "Tiyaga at Pagtitipid," its former owner, and that in 1933 they entered into the possession of the same peacefully and the full knowledge and consent of "Tiyaga at Pagtitipid (pp. 6-8, rec. on appeal).

On July 3, 1964, defendants filed a motion for leave to amend their answer alleging that plaintiff perpetrated fraud in securing the certificates of title covering said lots, and as the answer does not allege the fraud with sufficient fullness and particularity, said answer needs to be amended.

Also on the same day, July 3, 1964, defendant Pedro Garcia filed a motion for leave to file a third-party complaint against one Simeon B. Samson as a buyer in bad faith of lot no. 2, attaching to said motion a true copy of the deed of sale of August 15, 1963, executed by vendors spouses Feliciano Felipe and Faustina Contreras in favor of vendees-spouses Simeon Samson and Brigida Samson (pp.12-19, rec. on appeal).

On July 6, 1964, the defendants' two motions hereinabove mentioned were both orally and simultaneously denied, the trial court ruling that the certificates of title being relied upon by the plaintiff cannot be attacked collaterally but only by means of a separate action to that effect. The court directed that the trial proceed at that very moment as scheduled, and a subsequent motion for reconsideration of the ruling met the same fate. As trial could not be finished that day, continuance thereof was set for the next day, July 1964, despite defendants' plea for postponement of the trial to a later date to afford them time to file a separate action for annulment of title or reconveyance as ruled (pp. 19-20, rec. on appeal).

On July 7, 1964, defendants instituted their separate action, Civil Case No. Q-8114 of the same court, for annulment of title or reconveyance of the lots in question. When the continuation of the hearing of Civil Case No.

Q-7668 was called that morning, defendants moved that said hearing be held in abeyance, to be consolidated with the action just instituted. This motion for consolidation of trial was denied, trial proceeded as scheduled, and was continued on July 8, 1964, when said trial was terminated and Civil Case No. 7668 was submitted for decision (p 20, rec. on appeal).

On July 20, 1964, defendants filed a motion to hold the instant case in abeyance until after the action for annulment or reconveyance should have been terminated and disposed of, alleging that "x x there is therefore that necessity x x because, should the defendants be now ordered to vacate the premises in question but will later succeed in annulling plaintiff's title or in having the lots reconveyed to them, irreparable injuries would have been unnecessarily inflicted upon them x x x" (pp. 21-23, rec. on appeal).

On July 25, 1964, plaintiff filed an opposition to the motion to hold in abeyance, alleging that said motion is merely dilatory, that the claim of defendants over the lots in question is without any legal or factual basis, and that it is contrary to the constitutional precept of speedy administration of justice (pp. 24-31, rec. on appeal).

On July 27, 1964, defendants filed their rejoinder to plaintiff's opposition to their motion to hold in abeyance (pp. 31-26, rec. on appeal).

On August 12, 1964, defendants filed a motion to drop defendant Pedro Garcia from the case on the ground that plaintiff does not have any cause of action against him because plaintiff had already sold lot No. 2, and, consequently, cannot be prejudiced anymore by the possession of said lot by defendant Pedro Garcia (pp. 36-37, rec. on appeal; Exhibit D).

Finally, on October 18, 1964, the trial court rendered the following decision:

x x x x x

"The defense interposed by the defendants, particularly Felipe Raymundo and Pedro Garcia, is that they, on the contrary, and not the plaintiff, are the respective owners of Lots 3 and 2 of the San Francisco del Monte Subdivision, having been purchased from the mutual loan and savings association 'Tiyaga at Pagtitipid' composed exclusively of employees of the said San Francisco del Monte Subdivision, and to this effect they exhibited the receipts for installment payment (Exhs. 1, 1-A and 1-B) issued by 'Tiyaga at Pagtitipid' in favor of defendant Felipe Raymundo, as well as the tax declaration and a certificate of tax payment of Lot 3; that said defendants have been in possession openly, continuously and in concept of owner for more than 30 years, and that all these facts were known to the plaintiff as he was their co-employee in the 'Tiyaga at Pagtitipid', reason for which they were never asked by him to vacate the premises in question until he filed the present action.

"This being an ejectment case, the Court believes and so hold, that the only question to be determined is whether the plaintiff is the registered owner of the lots under litigation and whether the defendants unlawfully entered into possession of said lots. While on one hand, the plaintiff presented Transfer Certificates of Title Nos. 70981 and 68207, which shows that he is the absolute owner of the land in litigation, the defendants on their part failed to introduce any evidence or document with any color of title. The possession of the plaintiff is an attribute of ownership, and the contention of the defendants that they have purchased said lots from "Tiyaga at Pagtitipid" without having been issued any valid title to the property, cannot in any way operate to legalize the occupation and enjoyment thereafter of the premises by said defendants who are mere intruders in the land. Hence, conformably with an owner's right to possess his property, plaintiff, as the registered owner, has the right to possess and enjoy subject land to the exclusion of the defendants. Their efforts to amend the answer to allege that said titles were obtained thru fraud, cannot be brought up as an issue in the present case, this being a mere action for ejectment. That issue should be brought in an independent action.

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants Felipe

Raymundo, Cesar Obligacion and Pedro Garcia, and all persons claiming under them, ordering said defendants to vacate their respective lots in question and to remove their houses and other construction therefrom; ordering the aforesaid defendants to pay such to the plaintiff the sum of P20.00 per month by way of rentals from the date of their respective occupation above-stated until the plaintiff is restored to the possession thereof, plus the amount of P500.00 as attorney's fees, and to pay the costs x x x." (pp. 39-42, rec. on appeal.)

Defendants appealed to the Court of Appeals, and contended, among sixteen (16) errors assigned, that the trial court erred in not declaring them to be the true owners of the disputed lots and "in turning down the repeated requests of the defendants-appellants for the suspension of the proceedings in the present case in order to consolidate the trial thereof with that of Civil Case No. Q-8114 of the same court for the annulment of plaintiff's title over the lots in question, or for reconveyance, the parties and the subject matter in both cases being the same".

In its decision of May 22, 1969, the Court of Appeals affirmed the judgment of the trial court in toto thus:

x x x x x

"From the aforesaid decision, defendants appealed to this Court assigning several errors. One of the error raises the issue as to whether or not the lower court was right in turning down the repeated requests of the defendants-appellants for the suspension of the proceedings in the present case in order to consolidate with it the trial of Civil Case No. Q-8114 for the annulment of plaintiff's title over the lots in question, or for reconveyance.

"Essentially the present case is one of ejectment. And so the only issue here is whether the plaintiff is the registered owner of the lots in litigation and whether the defendants unlawfully entered into the possession of said lots. Plaintiff's ownership of the lots in dispute is amply proven by Transfer Certificate of Title Nos. 70981 and 68207 of the Office of the Register of Deeds of Quezon City. Defendants have nothing to offer and show any color of title on their part over the disputed lots. They claim they have purchased said lots from the mutual loan and savings association known as "Tiyaga at Pagtitipid" but they could not present any Deed of Sale in their favor. All they have shown to the court are the supposed receipts for installment payment (Exhs. 1, 1-A and 1-B) issued by the "Tiyaga at Pagtitipid" in favor of the defendant Felipe Raymundo and the tax declarations and certificate of payment of tax for Lot No. 3. All these documents are hopelessly inadequate to defeat the title and right of ownership of plaintiff over the lots under litigation as evidenced by his certificates of title over the disputed lots. As registered owner of the same their right to the possession and enjoyment of the property to the exclusion of all other persons cannot be questioned. And so even the claim of defendants that they have been in possession of the lots for a period of thirty (30) years will prove unavailing to the title of ownership of plaintiff over the lots in dispute. (Barcelona vs. Barcelona, 53 O.G. No. 2, 373.) For by express provision of Sec. 46 of Act No. 496 no title to register land in derogation to that of the registered owner can be acquired by prescription or adverse possession. (Corporacion de PP. Recoleta vs. Crisostomo, 32 Phil., 427.) It was therefore no mistake for the lower court to rule out defendants' claim that their possession of the property for over 30 years has ripened into title of ownership over the said lots.

"But defendants-appellants want to dispute the title of plaintiff-appellee on the ground of fraud. Note must be taken of the manner by which the latter acquired his title over the lots under litigation. In their own brief, defendants-appellants narrated: (as quoted on pp. 1-5 hereof) x x x From defendants-appellants' own brief we can gather that plaintiff-appellee's acquisition of the lots in question was pursuant to a judicial decision. If there was anything irregular or illegal in the manner by which plaintiff-appellee was able to acquire said lots defendants-appellants should have ventilated the matter with the court in the same proceedings. It is too late for them now to question the decision of the court ordering the San Francisco del Monte, Inc. the former owner of the lots in question, to convey Lot 3, Block 159 to the plaintiff-appellee and Lot 2 of the same Block to one Alfredo G. Villanueva. Even on the ground of fraud, they are given a limited period within which to attack the judgment which defendants-appellants did not take advantage of. We are not a bit surprised therefore that the

lower court refused to allow defendants-appellants to amend their answer to the plaintiff-appellee's complaint so as to seek the annulment of the title of the latter to the lots in question.

"Defendants-appellants also blame the lower court for denying the motion of defendant-appellant Pedro Garcia to be dropped from the action. He claims that no cause of action exists against him anymore because the plaintiff-appellee had no more title over Lot No. 2 at the time he instituted the present action. An examination of the Deed of Sale of Lot 2, Block 159 in favor of Simeon B. Samson and his wife show that plaintiff-appellee warrants that the lot is free from all liens and encumbrances, and guarantees the free and peaceful possession of the same by the vendees. He even agreed to bear the expenses for the ejectment, removal, and demolition of any construction whatsoever on the lot, including the expenses and costs of litigation. With the above-warranty, the plaintiff-appellee has every right to institute the present action for ejectment against whoever occupies the lot he sold to Simeon B. Samson and his wife. The lower court therefore committed no error in not allowing defendant Pedro Garcia to be dropped from the action of the plaintiff x x x (pp. 12-16 and 20-24, rec., L-30887)."

Hence, this present appeal by certiorari to this Court.

G.R. No. L-29754

This is an appeal from the order dated June 22, 1967 of the Court of First Instance of Rizal (Quezon City Branch IX) dismissing the complaint of herein plaintiffs-appellants in Civil Case No. Q-8114.

As heretofore stated, a complaint for annulment of title or reconveyance was filed by herein appellants (plaintiffs in the lower court) Felipe Raymundo and Pedro Garcia against herein appellee (defendant in the lower court) Feliciano Felipe on July 7, 1964, which was assigned to Branch IX (pp. 1-9, rec. on appeal).

On August 8, 1964, defendant Feliciano Felipe, on the ground that the complaint states no cause of action, filed a motion to dismiss the same (pp. 10-11, rec. on appeal). An opposition thereto was interposed by plaintiffs on August 15, 1964 (pp. 12-13, rec. on appeal), and on September 28, 1964, the trial court issued an order denying said motion to dismiss (p. 13, rec. on appeal).

Defendant Feliciano Felipe filed his answer on October 3, 1964 (pp. 14-16, rec. on appeal), denying the material allegations of the complaint and asserting that his certificates of title over the lots in question were not secured through fraud but pursuant to court order.

On February 2, 1965, plaintiffs filed an amended complaint (pp. 16-40, rec. on appeal), alleging that they are the true and lawful owners of their respective lots, having acquired the same from the San Francisco del Monte, Inc., the registered owner thereof, through their pre-war mutual savings and loan association "Tiyaga at Pagtitipid", as evidenced by various receipts issued in their favor by said association; that defendant Feliciano Felipe obtained certificates of title covering said lots in his own name by using two false quit-claim deeds as evidence in obtaining a favorable decision in Civil Case No. Q-6882 of the Court of First Instance of Rizal, entitled "Feliciano Felipe and Alfredo Villanueva vs. San Francisco del Monte, Inc.", an action to compel the latter to convey lot No. 3 to Felipe and lot No. 2 to Villanueva; that afterwards, Alfredo Villanueva transferred back lot No. 2 to Felipe, who in turn sold the same to the spouses Simeon and Brigida Samson; and that they were not made parties and were therefore unaware of and cannot be bound by said Civil Case No. Q-6882.

On March 27, 1965, defendant Alfredo Villanueva filed his answer denying the material allegations of the complaint and praying for the dismissal of the same (pp. 41-45, rec. on appeal).

On March 31, 1965, defendants Simeon and Brigida Samson filed their answer, likewise denying the material allegations of the complaint, and alleging that no cause of action exists against them (pp. 45-48, rec. on appeal).

On April 3, 1965, defendant San Francisco del Monte, Inc. filed a motion to dismiss, alleging that the complaint states no cause of action against it, and the alleged cause of action is barred by the statute of limitations (pp. 48-54, rec. on appeal).

On April 5, 1965, defendant Conrado Faustino filed his answer denying the material allegations of the complaint and his alleged complicity with defendant Feliciano Felipe in consummating the alleged fraud (pp. 54-62, rec. on appeal).

On April 8, 1965, plaintiffs filed an opposition to the motion to dismiss interposed by defendant San Francisco del Monte, Inc. (pp. 62-65, rec. on appeal). The trial court denied said motion in an order dated July 10, 1965 (pp. 65-66, rec. on appeal).

On August 18, 1965, defendant San Francisco del Monte, Inc. filed its answer, alleging affirmative and special defenses, and stating, among other things, that "even before the Pacific War, in 1934, the said lots were already sold to, and fully paid by, the "Tiyaga at Pagtitipid" (pp. 66-69, rec. on appeal).

On January 26, 1966, plaintiffs filed a motion to declare defendants Faustina Contreras, Ana Salonga, Ernesto Salonga, Matias Santos, Ambrocio Cruz, and Gabriel Dionisio in default for having failed to answer within the reglamentary period. Accordingly, said defendants were declared in default in an order of the trial court dated January 28, 1966 (pp. 70-71, rec. on-appeal).

Then on June 22, 1967, after a pre-trial but without any trial on the merits, the trial court issued an order dismissing the complaint, thus:

X X X X X

"When this case was called for pre-trial, counsel for plaintiffs, inviting the attention of the Court to an order of default against defendant Feliciano Felipe and several others, manifests that the only defendants left who now have a standing in Court are Conrado Faustino, Brigida V. Samson, Simeon B. Samson, San Francisco del Monte, Inc., and Alfredo Villanueva, all of whom are represented by counsel today with the exception of Villanueva. Counsel for San Francisco del Monte, Inc. then manifested that the subject-matter of this suit has already been the object of a final judgment by the Court of First Instance of Quezon City, Branch IV requiring and ordering the San Francisco del Monte, Inc. to transfer the property to Feliciano Felipe, and that in consonance therewith the San Francisco del Monte, Inc. executed a deed of sale, as a result of which a TCT was issued in the names of Feliciano Felipe and Alfredo Villanueva. It is also manifested now that after the title was issued in the names of these two persons, both of whom are now defendants in this case, Feliciano Felipe filed a suit of recovery of possession against herein plaintiffs who were then and still are in possession of the land; that a decision was rendered in favor of Felipe, and that Felipe Raymundo and the other defendants in that case have appealed to the Court of Appeals, and that this appeal is still pending.

"In view of these circumstances and facts about which all of the parties are agreed, the Court feels that it has no jurisdiction to hear this case it having been decided not only once but twice, by a court of equal jurisdiction and it being at present the subject of an appeal" (pp. 71-73, rec. on appeal).

A motion for reconsideration of the aforesaid order filed by plaintiffs on August 7, 1967, was denied by the trial court in an order dated December 8, 1967 (pp. 73-91, rec. on appeal).

Hence, this present appeal direct to this Court.

1. The trial judge in Civil Case No. Q-7668 grossly exceeded his authority when he denied the motion of the petitioners or the plaintiffs-appellants to amend their answer in said case for recovery of possession (accion publiciana) in order to allege with particularity and precision the defense of fraud in addition to their claim of

ownership over the two lots in question. These defenses of ownership and fraud are compulsory counter-claims against the pretension of respondent or defendant-appellee Feliciano Felipe that he owns the two disputed lots as the basis of his right to recover possession (*Gojo vs. Goyala et al.*, L-26768, Oct. 30, 1970, 35 SCRA 557, 563-564; *J.M. Tuason & Co., Inc. vs. Sanvictores*, L-16836, Jan. 30, 1962, 4 SCRA 123).

Counter-claims, other than money claims - which were not permitted by the old Code of Civil Procedure - are now allowed under the rules of court (Sec. 1, Rule 10, Rules of Court of 1940, Sec. 6, Rule 6, Revised Rules of Court of 1964; *Matela vs. Chua Tay*, L-16407, May 30, 1962, 5 SCRA 163, 168-169; *Pongos vs. Hidalgo etc. et al.*, 47 O.G. 733; Vol. 1, *Moran, Comment on the Rules of Court*, 1970 ed., p. 264).

"The object of a counterclaim is to prevent multiplicity of suits by allowing the determination in one action of the entire controversy between the parties, thus avoiding incon-venience, expense, waste of the court's time and injustice. A counterclaim also enables a defendant to make his defense more complete and effectual than it would be if he stood on one answer alone" (Vol. 1, *Martin, Rules of Court*, 1969 ed., p. 274-citing 80 C.J.S. 22; 47 Am. Jur. 712; *Merchant's Nat. Bank vs. Clark Parker Co.*, 215 Cal. 296; 9 P. (2d.) 826, 81 ALR 778; *Hoffman vs. Maloratsky*, 164-A. 260; 112 RJ Eq. 333). The herein petitioners or plaintiffs--appellants could have been spared so much expense, anxiety and anguish and the delay in the disposition of the two cases could have been averted, if the lower court in said Civil Case No. Q-7668 correctly appreciated the nature and purpose of the counter-claims interposed therein as envisioned by the Rules of Court.

In ordering the petitioners to file a separate action for annulment of title or reconveyance, the trial court in Civil Case No. Q-7668, committed a grave error; because under the rules the compulsory counterclaim would be barred if not interposed in the answer (Sec. 4, Rule 9, Revised Rules of Court)

2. The grave error committed by the trial court in Civil Case No. Q-7668 was compounded by its refusal to consolidate Civil Case No. Q-7668 with Civil Case No. Q-8114, which consolidation should have been ordered as allowed under section 1 of Rule 31 of the Revised Rules of Court and controlling jurisprudence, immediately after the institution of Civil Case No. Q-8114 pursuant to the ruling of said trial court.

Although consolidation of several cases involving the same parties and subject-matter is a matter addressed to the discretion of the trial court, joint hearing becomes a matter of duty if two or more cases are tried before the same judge, or even if filed with the different branches of the same court of first instance, provided one of such cases has not been partially tried (*PAL, et al. vs. Teodoro, et al.*, G. R. No. L-6698, Aug. 30, 1955, 97 Phil. 461).

True it is that on July 6, 1964, the hearing of Civil Case No. Q-7668 was commenced in Branch IV, while Civil Case No. Q-8114 was filed the following day, July 7, 1964, when the trial of Civil Case No. Q-7668 was continued. Although the latter was assigned to Branch IV of the Rizal Court of First Instance, Quezon City, the trial judge presiding over Branch IV of the same court and trying Civil Case No. Q-7668 should have granted the motion of the counsel for petitioners Felipe Raymundo, Pedro Garcia and Cesar Obligacion, for a joint hearing by him of the two cases; because both cases involve the same parties, the same subject-matter (the two disputed lots), and the same issues of ownership and possession of the two questioned lots, and are handled by the same lawyers. There can therefore be no confusion in the presentation of the evidence or in the appreciation of such evidence or of the witnesses by the same trial judge hearing both cases. The trial judge presiding over Branch IX will have no reason to ob-ject to such consolidation of the hearing of the two cases in Branch IV. Such a consolidation of the two cases will achieve the purpose or rationale of a joint hearing authorized by Rule 31 of the Rules of Court, namely, to avoid duplication of suits, guard against oppression or abuse, prevent delay, clear congested dockets, simplify the work of the trial court, and save unnecessary costs and expenses, thus attaining justice with maximum speed and with the least expense and vexation to the litigants. (*Palanca vs. Querubin*, G.R. No.

L-29510-31, Nov. 29, 1969, 30 SCRA 739, 745.)

The fact that Civil Case No. Q-7668 was already partly tried on July 6, 1964, should not justify the refusal of the trial judge in consolidating the same with Civil Case No. Q-8114, which was filed on July 7, 1964; because the evidence already submitted by the plaintiffs in the first case could be submitted as part of the evidence in the second case, without further need of re-taking the testimonies of the witnesses, in view of the fact that both cases involve as hereinbefore stated the same parties, the same subject-matter and the same issues. Pursuant to section 2, Rule 1 of the Revised Rules of Court, the rules of consolidation should be liberally construed to achieve the object of the parties in obtaining just, speedy and inexpensive determination of their cases. (*Palanca vs. Querubin*, supra; *Sideco vs. Paredes*, 74 Phil. 6, 7.)

Consolidation of the two cases might not be proper, if the joint hearing were to be conducted by the judge presiding over Branch IX to which Civil Case No. Q-8114 was assigned, under the principle enunciated in the case of *PAL vs. Teodoro* (supra.); because the judge presiding over Branch IX was not the one who partly tried Civil Case No. Q-7668 and therefore did not observe the witnesses who testified on July 6, 1964 in Civil Case No. Q-7668 before the trial judge of Branch IV. But that is not so in these two cases where precisely Civil Case No. Q-8114 was to be transferred to Branch IV and consolidated with Civil Case No. Q-7668, which was then already partly tried by the trial judge presiding over Branch IV the same Court of First Instance of Rizal, Quezon City.

3. After denying the separate motions of Feliciano Felipe and San Francisco del Monte, Inc., to dismiss the complaint filed by Felipe Raymundo, Pedro Garcia and Crispulo D. Felipe in Civil Case No. Q-8114, the trial judge presiding over Branch IX of the Court of First Instance of Rizal (Quezon City), after conducting a pre-trial of said Civil Case No. Q-8114 and without a hearing on the merits, erred in dismissing said Civil Case No. Q-8114 thru the order dated June 22, 1967 on the ground that "it has no jurisdiction to hear this case it having been decided not only once but twice, by a court of equal jurisdiction and it being the subject of an appeal" referring to Civil Cases Nos. Q-6882 and Q-7668, which were both decided by the trial judge presiding over Branch IV the Court of First Instance of Quezon City, with Civil Case No. Q-7668 having been appealed to the Court of Appeals (now L-30887 before US) by Felipe Raymundo, Pedro Garcia and Cesar Obligation. It seems that the trial judge of Branch IX misapprehended the nature and purpose of the complaint filed by herein appellants Felipe Raymundo, Pedro Garcia and Crispulo Felipe in Civil Case No. Q-8114. Pursuant to the ruling of the trial judge in Case No. Q-7668 that the herein plaintiffs-appellants should institute a separate action for annulment or reconveyance, Civil Case No. Q-8114 was precisely filed by said plaintiffs-appellants to annul the titles over the two disputed lots, issued in the name of the defendant Feliciano Felipe and his successors-in-interest Alfredo G. Villanueva, Simeon B. Samson and Brigida V. Samson on the ground that said titles were secured fraudulently by said defendant Feliciano Felipe in Civil Case No. Q-6882, in which the aforesaid plain-tiffs were not parties and were not even notified of the pendency of said Civil Case No. Q-6882. The herein plaintiffs-appellants (in L-29754) were again denied their day in Court in Civil Case No. Q-8114, for the simple reason that their complaint was dismissed without giving them the opportunity to submit evidence to demonstrate their claim of ownership and of fraud allegedly perpetrated by the herein defendant-appellee Feliciano Felipe in securing the titles to the two disputed lots, which they allegedly have been possessing since 1933, when they purchased the same from the defendant-appellee San Francisco del Monte, Inc. thru their association known as "Tiyaga at Pagtitipid," which was their pre-war mutual savings and loan association composed of employees of the San Francisco del Monte Subdivision, Inc. The plaintiffs-appellants were vexed by and exposed to a long and expensive litigation; because thru deceit, Feliciano Felipe despoiled them of their lots in Civil Case No. Q-6882 in which they were not parties and about which they were not notified, aggravated by the unjust refusal of the trial judge presiding over Branch IV to consolidate the hearing of the two Civil Cases

Nos. Q-7668 and Q-8114, with the latter case precisely having been filed pursuant to the order of said trial judge that any claim for the annulment of the titles of Feliciano Felipe and for the conveyance or the lots and of the said titles to plaintiffs-appellants should be thru a separate action. And the unkindest cut of all was the dismissal without a trial on the merits of said separate action in Civil Case No. Q-8114 by the presiding judge of Branch IX of the same Court of First Instance of Rizal (Quezon City).

Consequently, the decision dated May 22, 1969 of the Court of Appeals affirming the decision of the trial court in Civil Case No. Q-7668 (L-30887) should be reversed, the order dated June 22, 1967 of the trial judge in Civil Case No. Q-8114 (L-29754) should be set aside, and the records of both cases Nos. Q-7668 and Q-8114 should be remanded to the court of origin for further proceedings, if justice were not to be denied to herein plaintiffs-appellants in G.R. No. L-29754 or petitioners in G.R. No. L-30887.

WHEREFORE, the decision dated May 22, 1969 of the Court of Appeals is hereby reversed; the judgment dated October 18, 1964 of the trial lower court in Civil Case No. Q-7668 (G. R. No. L-30887) and the order dated June 22, 1967 of the trial court in Civil Case No. Q-8114 (G.R. No. L-29754) are hereby set aside as null and void; the records of both civil cases Nos. Q-7668 and Q-8114 are hereby consolidated and remanded to Branch IV of the Quezon City Court of First Instance; and the trial judge presiding over said Branch IV is hereby directed to try on the merits Civil Case No. Q-8114 and to render only one judgment in both Civil Cases Nos. Q-7668 and Q-8114 on the basis of the evidence submitted in both cases. Costs against respondent in L-30887 and defendants-appellees in L-29754.

So ordered.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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