

**ERIBERTO P. ROSARIO AND PAZ UNTALAN DE ROSARIO, PLAINTIFFS
AND APPELLANTS, VS. FILOMENO CARANDANG, ET AL.,
DEFENDANTS AND APPELLEES.**

G.R. No. L-7076. April 28, 1955

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

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

This is an appeal from two orders of the Court of First Instance of Pangasinan in Civil Case No. 12316, the first dismissing plaintiffs' complaint, and the second denying plaintiffs' motion for reconsideration and for the admission of an amended complaint.

On October 16, 1952, plaintiffs Eriberto P. Rosario and Paz Untalan de Rosario filed a complaint against defendants Filomeno Carandang, et al., specifically alleging therein that plaintiffs-appellants are the owners and possessors of a parcel of land (lot No. 2, plan Psu-123111) in Labrador, Pangasinan; that they have applied for the registration thereof in Registration Case No. 658, G.L.R.O. No. 2610, wherein defendants filed an opposition; that on or about October 3, 1952, defendants illegally entered into the premises, destroyed the nipa plants thereon, and made dikes to convert the place into a fishpond; that in spite of warnings and notices from plaintiffs-appellants, defendants continued to possess and occupy the premises; and that as a result of defendants' entry into and possession of the land in question, plaintiffs have suffered damages in the amount of P2,000.

On November 3, 1952, defendants moved for the dismissal of the complaint, claiming (1) that the Court had no jurisdiction of the case because it is one of forcible entry and detainer exclusively cognizable by the Justice of the Peace Court, and furthermore, because the demand for damages does not exceed P2,000; and (2) that there is another action pending between the same parties and for the same cause (Land Registration Case No. 658, G.L.R.O. No. 2610, wherein plaintiffs are the applicants and defendants are the oppositors, and Land Registration Case No. 602, G.L.R.O. No. 2313, wherein defendants are the applicants and plaintiffs are the oppositors) in which the title and ownership of the parcel in question is involved and contested. Plaintiffs opposed the motion to dismiss, alleging that the Court of First Instance acting as a registration court, can not award damages resulting from defendants' alleged illegal entry into and possession of the land in question.

The lower Court found the motion to dismiss meritorious, and on November 7, 1952 ordered the dismissal of the complaint. Plaintiffs moved for the reconsideration of the order of dismissal, and prayed as well for the admission of an amended complaint, wherein they make specific allegation for the first time that the defendants are claiming ownership of the land in question in the two registration cases previously mentioned. Defendants opposed the motion for reconsideration and the admission of an amended complaint, upon the ground that the amended complaint would convert plaintiffs' action from one of forcible entry and detainer to one of recovery of ownership and possession. Again, defendants' position was sustained by the Court below; and later, it denied a motion for the reconsideration of the order of dismissal. Hence, this appeal by the plaintiffs to this Court.

We see no error in the lower Court's dismissal of appellants' original complaints. It was filed on October 16, 1952,

barely two weeks from and after the alleged entry into and illegal taking of possession of the land in question by the defendants. The case pleaded was a clear action for forcible entry and detainer, where plaintiffs allege prior possession of the premises in question and to have been deprived thereof within the period of one year, by other person or persons, who excluded them therefrom and withheld possession without right—a case falling within the exclusive and original jurisdiction of the justice of the peace courts (Rule 72, Sec. 1, Rules of Court: Sec. 88, Rep. Act 296).

Appellants insist that their action is not for forcible entry and detainer but for declaration of ownership or quieting of title, with claim for damages in the sum of P2,500. This argument is untenable. There is no averment in the complaint that the defendants claim or dispute the ownership of the parcel in question. The simple allegation therein that defendants have filed an opposition in the case where plaintiffs have applied for the registration of said parcel, does not amount to an allegation that the defendants are claiming ownership thereof, since an opposition in a registration case may be based on claims or interest other than ownership in the land sought to be registered. And neither does the fact that appellants pray in their complaint that they be declared owners of the parcel in question convert their action from one of forcible entry into one for declaration of ownership or quieting of title; for the prayer is not a material part of the complaint (*Vda. de Lacson vs. Diaz*, 87 Phil., 150, 47 Off. Gaz., [Supp.] 337), and it is the allegations of the complaint, and not the prayer, that not only determine the jurisdiction of the court, but confer that jurisdiction (*Fernandez contra Gala-Sison*, supra, p. 282; *Infante vs. Dulay*, 67 Phil., 259).

Plaintiffs also insist that their action falls within the jurisdiction of the Court of First Instance, because their claim for damages amounts to P2,500. This argument is untenable. In the first place, settled is the rule that justice of the peace courts have exclusive jurisdiction over forcible entry and detainer cases, regardless of the amount claimed therein as damages (*Lao Seng Hian, et al. vs. Honorable Natividad Almeda Lopez, et al.*, 83 Phil., 617; 46 Off. Gaz., [11] 70). In the second place, it appears from the allegations of the complaint that only the amount of P2,000 is claimed to have been suffered by appellants as damages as a result of defendants' illegal possession and destruction of the land in question (par. 8 of the complaint, Rec. on App., p. 4), the additional claim of P500 being allegedly for "additional expenses, besides the damages stated above", meaning expenses incurred due to the filing of this case. Considering that the expenses for the filing of the suit, viz, costs and attorneys' fees, are excluded from the jurisdictional amount that confer jurisdiction upon courts, the additional amount of P500 claimed by appellants in their complaint would not take their case out of the jurisdiction of the justice of the peace court, even if such jurisdiction were to be determined by no other factor than the amount sought to be recovered in the complaint.

Under their second assignment of error, appellants contend that the lower Court erred in denying their motion for reconsideration and in refusing to admit their amended complaint. Again we find this assignment of error to be without merit. While it is true that under the liberal provisions of our Rules of Court, amendments to pleadings are favored and liberally allowed in the furtherance of justice, it is obvious that when it appears from the very face of the complaint that the Court has no jurisdiction over the subject-matter of the case, an amendment of the complaint can not be allowed so as to confer jurisdiction upon the Court. In *Alvarez, et al. vs. Commonwealth of the Phil., et al.*, 65 Phil., 302, this Court held:

Under this section (Sec. 101 of the Code of Civ. Pro. the amendment of a pleading, after a demurrer is sustained, is not an absolute right of the pleader; the amendment rests rather in the sound discretion of the court. Generally when a demurrer is sustained, the party who presented the defective pleading is afforded an opportunity to amend it under conditions which the court may fix; and this should be done when it appears clearly that the defect is remediable by amendment (*Molina vs. La Electricista*, 6 Phil., 519; *Serrano vs. Serrano*, 9 Phil., 142; *Segovia vs. Provincial Board of Albay*, 13 Phil., 331; *Balderrama vs. Compania General*

de Tabacos, 13 Phil., 609; Macapinlac vs. Gutierrez Repide, 43 Phil., 770). But when it is evident that the court has no jurisdiction over the person and the subject matter that the pleading is so fatally defective as not to be susceptible of amendment, or that to permit such amendment would radically alter the theory and the nature of the action, then the court may refuse the amendment of the defective pleading and order the dismissal of the case (49 C. J., sec. 563, p. 457; Sar Joaquin etc., Canal, etc., Co. vs. Stanislaus County, 155 Cal., 21; Bell. vs. California Bank, 153 Cal., 234; Ridgway vs. Pogan, 2 Cal. Unrep. Cas., 718; Schlecht vs. Schlecht, 277 F. 1065; Beal vs. United Properties Co., 46 Cal. A., 287; Bemartini vs. Marini, 45 Cal. A. 418; Lentz vs. Clough, 39 Cal. A., 430; Burki vs. Pleasanton School District., 18 Cal. A., 493; Patterson vs. Steele, 93 Neb., 209; Cox vs. Gerogia R., etc. Co., 139 Ga., 532; Peo. vs. McHatton, 7 111., 731; Higgins vs. Degney, 25 Misc., 248; 55 N. Y. S., 59; Wood vs. Anderson, 25 Pa., 407). Section 101 authorizing the amendment of a defective pleading should be liberally construed and the courts, whenever possible, should incline in favor of the amendment; but when it appears patent that the pleading is not susceptible of amendment upon the grounds above set out, the appellate courts should not hold that the former have abused their discretion in not permitting the amendment and in dismissing the case."

Appellants' original complaint, as we have already determined, is one for forcible entry and detainer, over which the Court below has no jurisdiction. Not having acquired jurisdiction' over the case by the filing of the original complaint, the lower court has neither the power nor the jurisdiction to act on the motion for the admission of the amended complaint, much less to allow such amendment, since it is elementary that the court must first acquire jurisdiction over the case in order to act validly therein. Wherefore, the Court below did not err in refusing to admit plaintiffs-appellants' amended complaint.

The case might be different had the amendment been made before an answer or a motion to dismiss had been filed, since the original complaint was then amendable, and the amendment could supersede the original pleading, as of right, without leave of court being required, and without the Court taking cognizance at all of the original complaint.

In view of the foregoing, the orders appealed from are affirmed, without prejudice to appellants' filing another case for reivindicacion. Costs against appellants.,

Pablo, Acting C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Orders affirmed.

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