

MODESTO SANTOS, PETITIONER, VS. POTENCIANO PECSON, JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, PABLO RAMOS AND AURELIA SANCHEZ, RESPONDENTS.

G.R. No. L-1122. September 17, 1947

Ponente: TUASON, J.

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TUASON, J.:

This is a petition for certiorari to review an order of the Court of First Instance of Bulacan, sustaining a motion to exclude from the complaint two of various defendants on the ground that the complaint does not allege a cause of action against them. We assume that the plaintiff elects to stand on his complaint and that the court in due course will enter judgment dismissing it with reference to the two defendants ordered dropped.

Certiorari is not the appropriate remedy to set aside an order of dismissal. Such order being undeniably within the jurisdiction of the court to make, the remedy is by appeal. (Rule 41 of the Rules of Court.) Whether the order in question is interlocutory or final is immaterial so far as availability of the writ of certiorari is concerned. The only difference is that if it is interlocutory the appeal would have to wait until final judgment is rendered; if it is final it is appealable immediately.

Mere possible delay in the perfection of an appeal and in securing a decision from the appellate court is no justification for departing from the prescribed procedure. Delay might be a good ground for invoking the extraordinary remedy in cases where there was lack or excess of jurisdiction or abuse of discretion and the delay would work injustice to the complaining party or make the appeal ineffectual to redress the error; where, for instance, execution had been issued, a receiver had been appointed, or attachment had been levied, and there was no time to waste. No irreparable damage is foreseen in the present case. Although appeal may be less speedy it affords adequate and complete remedy.

For the convenience of the parties and to avoid further delay, it may be well to pass judgment on the nature of the order under consideration; whether it is interlocutory or final so as to permit an appeal before the case is disposed of as to the rest of the defendants. This depends upon the relation of the order to the entire proceeding.

Briefly, Pablo Ramos and Aurelia Sanchez, man and wife, bought from the surviving children of Simplicio Santos, deceased, a fishpond which, according to Modesto Santos, present petitioner and Simplicio Santos' brother, he is holding under a verbal contract of indefinite lease with his deceased kin, with option to purchase the property in the event the owner decided to part with it. After the sale, Modesto Santos brought suit to declare it null and void, to have the vendors and vendees allow him to exercise his alleged option to buy the fishpond, for which he offered P120,000, or to compel them to respect the contract of lease and to pay damages. The parties the court would have eliminated are the purchasers.

There can be no serious question that with respect to these two defendants the order is final; for unless the order is modified or reversed, they will be forever out of the case.

Some American courts have held that a judgment, order or decree to be appealable must be final as to all the parties in the proceeding. (4 C.J.S., 199.) In some jurisdictions, however, there are decisions to the contrary. (Ibid., 202.) This court seems to lean toward the latter rule in *Macapinlac vs. Gutierrez Repide* (43 Phil., 770).

Be that as it may, in the particular circumstances of this case, the order under review should be held appealable without waiting until judgment is handed down with reference to the other defendants. The buyers of the questioned land have a vital interest in the annulment of the sale and other reliefs sought by the plaintiff, to the point of making trial and decision on the merits of the case impossible before the fate of the order for their exclusion is known. The brief statement of the case we have made makes obvious the indispensability of a single trial unless the purchasers have been definitely adjudged free from liability.

The petition is denied without costs.

Paras, Pablo, Hilado, Perfecto, Bengzon, and Hontiveros, JJ., concur.

DISSENTING

FERIA, J.:

This is a petition for certiorari against the respondent judge on the ground that he acted with grave abuse of discretion in sustaining a motion to dismiss the amended complaint as to some of the defendants, on the ground that the amended complaint of the plaintiff now petitioner does not state facts sufficient to constitute a cause of action against them.

The questions for us to resolve in order to decide the present case are: (1) whether the order dismissing the amended complaint as to some defendants is final and therefore appealable, or not final and consequently not appealable; and (2) if not appealable, whether or not the respondent judge acted in excess of jurisdiction or with grave abuse of discretion in entering such order. Were the order final and appealable, certiorari would not lie even if the court or respondent judge acted in excess of jurisdiction or with grave abuse of discretion, because there is appeal; and were it not final and hence not appealable, certiorari would lie if the respondent acted with grave abuse of discretion.

(1) Is the order or judgment of dismissal of the plaintiff or petitioner's amended complaint as to some defendant buyers of the land in question final, or in other words, did that order put an end to the ordinary proceedings of the case in court? The answer to this question depends upon whether said defendants vendees have severable or common interest with the defendants vendors as to whom the plaintiff's complaint has not been dismissed. If the defendants have separate or severable interest, a final order or judgment may be entered as to them leaving the action to proceed against the others, according to section 4, Rule 35, of the Rules of Court. This section provides that "in an action against several defendants the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper." But if the defendants have common interest, an order or judgment of dismissal as to some of them is not final and, therefore, not appealable, for it is a well-known rule that the whole controversy or all the issues involved in a case and as to all defendants must be disposed of or settled before any final judgment may be entered, a rule recognized a *contrario sensu* in the above quoted provision of section 4, Rule 35.

Section 4, Rule 35, is a literal copy of section 579 of the Code of Civil Procedure of California, and the Supreme Court of this State in the case of *Baxter vs. Boege* (173 Cal., 589, 592; 160 Pac., 1073), held the following:

"* * * other words, the rule is that any set of parties whose interests are identical must have the controversy as

to them settled before any final judgment may be entered. No given set of parties may try the case piecemeal, but separate parties, if the court in its discretion so directs, may litigate their controversies separately, and may proceed to final judgment without waiting for judgments as to other parties. Section 579 of the Code of Civil Procedure is as follows:

" 'In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.' "

The facts of the case as briefly stated in the majority decision is the following:

"Briefly, Pablo Ramos and Aurelia Sanchez, man and wife, bought from the surviving children of Simplicio Santos, deceased, a fishpond which, according to Modesto Santos, present petitioner and Simplicio Santos' brother, he is holding under a verbal contract of indefinite lease with his deceased kin, with option to purchase the property in the event the owner decided to part with it. After the sale, Modesto Santos brought suit to declare it null and void, to have the vendors and vendees allow him to exercise his alleged option to buy the fishpond, for which he offered P120,000, or to compel them to respect the contract of lease and to pay damages. The parties the court would have eliminated are the purchasers,"

From the foregoing facts it appears evident that the defendants purchasers and the defendants vendors of the property have common interest adverse to the plaintiff, because a judgment against the vendees will necessarily affect the vendors, and vice versa a judgment against the vendors will affect the purchasers or vendees. The purchasers in the present case are indispensable and the vendors necessary party defendants. The vendors and vendees having common interest, the trial and final judgment as to all must be one. A judgment or order which does not decide the case or put an end to the proceedings as to all but only as to some of the defendants, is not final and, therefore, not appealable in accordance with section 2, Rule 41, which says:

"SEC. 2. Judgments or orders subject to appeal.—No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other."

The plaintiff, now petitioner, prays in his complaint that "the court should declare that the defendants are duty bound to permit plaintiff to exercise his option" to purchase the lands sold by the defendants vendors to the defendants purchasers or vendees; that in the event the sale in favor of the defendants vendees be held valid, "that the property subject of the said sale * * * covered by original certificate of title No. 773 of the office of the register of deeds of Bulacan be held answerable for the claim of the plaintiff" * * * "and further that in such event the lease in favor of the plaintiff be recognized and a period for the same be fixed by the court," and "still further, that in such event defendants be declared liable, jointly and severally, to reimburse the plaintiff the sum of P75,000, the value of the improvements placed in the property in question."

This is recognized by the majority when the decision holds that "the buyers of the questioned land have a vital interest in the annulment of the sale and other reliefs sought by plaintiff, to the point of making the trial and decision on the merits of the case impossible before the fate of the order for their exclusion is known. The brief statement of the case we have made makes obvious the indispensability of a single trial unless the purchasers have been definitely adjudged free from liability."

However, the majority is of the opinion that petitioner may be allowed to appeal from the order of dismissal, and the trial of the case on the merits as to other defendants should be suspended until the appeal has been fully disposed of. Allowing such an appeal would be doing violence to the fundamental principle underlying our system of civil procedure that no appeal should be allowed from an order which does not dispose of the case as to all the parties having common interest, for such an order, not being final, should not stay the progress of the action (section 2, Rule 41). No given set of parties may try or appeal a case by piecemeal. In the case of Go-Guico

vs. Manila, 1 Phil., 502, 508, the late Mr. Justice Willard construing section 123 of Act No. 190, from which section 2, Rule 41, was substantially taken, said that "In considering the American authorities it must be borne in mind that probably no one of the statutes therein construed contained such strong provisions against appeals from interlocutory resolutions as are found in our article 123. The evils resulting from such appeals under the Ley de Enjuiciamiento Civil were well known. It was to cure such evils that this article was adopted. It expressly prohibits appeals not only from interlocutory orders but also from interlocutory judgments."

The premise which has led the majority to such an untenable conclusion, is the statement found in volume 4, page 202, of the Corpus Juris Secundum, to the effect that "in some jurisdiction, however, there are decisions to the contrary," that is, decisions that adopt the rule or view that an order or judgment though not final as to all parties may be appealed; in opposition to the rule enunciated on page 199 of the same volume to the effect that, as a general rule, "a judgment, order or decree to be appealable must be final as to all the parties to the proceeding."

We have examined each and every one of the decisions cited in support of the so-called general rule as well as of the enunciated decisions to the contrary, and found that they do not bear out the conclusion or enunciation that they are decisions to the contrary, and that the general rule is not correctly enunciated. The Corpus Juris Secundum does not correctly enunciate the rule on the matter. We believe that the correct enunciation of the rule should be thus: a judgment, order or decree to be appealable must be final as to all the parties if they have joint or common interest; but if the defendants have separate or severable interest the court may render final and appealable judgment or order as to some, and leave the action to proceed as to others. This is the rule followed in the cases cited in Corpus Juris Secundum, in Baxter vs. Boege, supra; in those of Haunterman vs. New Orleans Public Service, 4 Fed. Rule Serv., page 716, May 2, 1941; and Atwater vs. North American Coal Corporation, April 8, 1940, 3 Fed. Rules Serv., p. 512, 546.4 Class I, quoted in Moran's Commentaries on Rules of Court, 2d ed., Vol. I, pp. 734, 735, and in the so-called decisions to the contrary, the pertinent parts of which are quoted hereunder:

"Martin, an officer of the trust company, is joined as a co-defendant and relief is sought against him personally. He filed an answer. There has been no disposition of the case as to him. The issue as to him appear to be substantially different and severable from those as to the commissioner of banks. The defendant commissioner of banks filed a demurrer to the bill, which was sustained by interlocutory decree. A final decree was entered dismissing the bill as to that defendant. The plaintiff's appeals from those decrees bring the case here. In these circumstances the issues raised by these appeals, being final as to the commissioner of banks, may be considered by this court." (Foley vs. Commissioner of Banks, Mass., 197 N. E., 449.) (Italics supplied.)

"Where, in action against city and railroad company, city entered special plea, plaintiff could properly bring error after ruling on special plea dismissing as to city, since there was no joint interest between defendants in the matter decided, and judgment was final as to city." (Bowles vs. City of Richmond, Va., 129 S. E., 489.)

"It is quite clear that, when the trial court sustained the demurrer of the railroad company and dismissed it from the case, and the plaintiff declared that he did not desire to further plead, such procedure constituted a final order as to the railroad company, and it was not thereafter a party to the proceeding, in the absence of error proceedings within 70 days or an appeal within 30 days. It can make no difference, however, in the final determination of this case, because the city is a party to the proceeding in this court and an injunction against the city further proceeding to carry out the improvement until compensation is paid is necessarily a bar to further progress on the part of the railroad company." (Ghaster vs. City of Fostoria, Ohio, 152 N. E., 655, 656.)

"* * * They have placed much stress upon the language of this court in Stockton, etc., Works vs. Glen's Falls Insurance Co., 33 P. 633, 98 Cal. 557, where the court held the judgment or decree denying to the defendant the relief demanded, 'in what is termed its cross-complaint,' was not a final judgment, and the separate appeal therefrom was dismissed. The court said (page 577 [33 P. 637]): 'There can be but one final judgment in an

action, and that is one which in effect ends the suit in the court in which it is entered, and finally determines the rights of the parties in relation to the matter in controversy.' But that case, and others cited by respondents to the same effect, can only have application to parties to an action whose interests are identical. Separate parties, if the court in its discretion so direct, may litigate their controversies separately, and may proceed to final judgment without waiting for judgments as to other parties. *Baxter vs. Boege*, 160 P. 1072, 173 Cal. 589, 592; *Rocca vs. Steinmetz*, 208 P. 964, 189 Cal. 426." (*Howe vs. Key System Transit Co.*, 198 Cal. 525, 246 P. 40, 41). (Italics supplied.)

For example, debtors jointly or solidarily liable have joint or common interest; while debtors severally or "mancomunadamente" liable have separate or severable interest. In an action against two or more joint and solidary debtors no final order or judgment (appealable) may properly be rendered as to some of the joint debtors and leaving the case to proceed against the others, for the simple reason that the action should have to be finally decided as to all defendants since a final order or judgment in favor or against one or the joint debtors will necessarily affect the others. But in an action against two or more defendants severally or "mancomunadamente" liable, a final order or judgment may be properly rendered as to some defendants, leaving the case to proceed against the others, because they have severable interest.

(2) In view of our conclusion that the resolution or judgment dismissing the amended complaint of the plaintiff petitioner as to the defendants purchasers of the land in question is not appealable, the next question for us to determine is whether the respondent judge acted in excess of jurisdiction or with grave abuse of discretion, in dismissing the amended complaint as to the defendants vendees, and leaving the action to proceed against the defendants vendors. For, as we have already stated, if the respondent judge acted with grave abuse of discretion in so doing, certiorari would lie and the petitioner's petition must be granted, because the said order of dismissal is not appealable.

Section 4, Rule 35, quoted above in connection with the discussion of the first question, provides that "In an action against several defendants the court may in its discretion render judgment against one or more of them, leaving the action against the others whenever a several judgment is proper." From this provision it appears plain that the respondent judge gravely abused the discretion granted him by said section 4 of Rule 35, in entering a judgment of dismissal in favor of the defendants vendees, and leaving the action to proceed against the defendants vendors of the land in question, for the simple reason that all the defendants having common interest in the action adverse to the plaintiff, no several judgments but only one may properly be rendered in the case. According to the allegations in the complaint and relief demanded therein which we have set forth above, no final order or judgment may be rendered by the court in favor or against some without affecting the other defendants.

There is an additional ground in support of our conclusion that the respondent judge acted with grave abuse of discretion in granting the motion to dismiss as to the defendants vendees and leaving the action to proceed against the defendants vendors. Section 3, Rule 8, relating to motion to dismiss, provides, that "after hearing, the court may deny or grant the motion or allow amendment, or may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable." As the grounds alleged in the motion to dismiss filed in the instant case by the defendants purchasers appear not to be indubitable, but rather questionable, the respondent judge, in the exercise of his discretion should have, in the present case, deferred the hearing and determination of the said motion until the trial and decision of the case on the merits.

Wherefore, the order or judgment of dismissal under consideration should be set aside, and the respondent judge ordered to hear and determine the motion to dismiss until the trial and decision of the case on the merits.

MORAN, C.J.:

I concur in this opinion of Mr. Justice Feria.

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