

**LEONCIO GARCHITORENA, ET AL., PLAINTIFFS AND APPELLANTS,
VS. ROSA DE LOS SANTOS, ET AL., DEFENDANTS AND APPELLEES.***G. R. No. L-17045. June 30, 1962*

Ponente: PADILLA, J.

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Alleging and claiming that they are the true and absolute owners of two parcels of land, under tax declarations Nos. 2604 and 2606, situate in the barrio of Abucayan, municipality of Goa, province of Camarines Sur, described in their complaint dated and filed in the Court of First Instance of Camarines Sur on 23 December 1954r they and their predecessors-in-interest having been in possession thereof for more than 40 years; that the defendants Rosa, Fausta, Vicente, Lourdes, Artemio and Praxedes, all surnamed De los Santos, who are brothers and sisters, had conspired with one another to claim ownership or title to the parcels of land and had thus, disturbed their possession thereof, the plaintiffs who are all brothers prayed that they be declared owners of the two parcels of land above referred to; that the defendants be condemned to perpetual silence with respect to said parcels of land and ordered to pay them P500 for damages and attorney's fees and costs; and that they be granted any other just and equitable relief (civil case No. 2886). On 10 January 1955 the defendant Rosta de los Santos moved for an extension of time to file an answer and for the impleading as plaintiff of Juan Garchitorena, a brother of the plaintiffs. The defendant Vicente de los Santos filed an answer dated 31 January 1955 to the complaint, praying that it be dismissed with costs, on the ground that the cause of action was barred by a prior judgment. On 9 February 1955 the defendants moved for the dismissal of the complaint on the ground of res judicata and estoppel by judgment. The motion was denied. On 7 March 1955 the defendants set up a counterclaim of P3,000 for actual damages, P5,000 for moral damages, P5,000 for exemplary damages, P300 as attorney's fees, and P100 for every three months as compensation for the use of the parcels of land beginning November 1954 until possession thereof be restored to them, and prayed for a preliminary writ of mandatory injunction and for any other just and equitable relief. On 10 March 1955 the plaintiffs answered the counterclaim denying it. Trial was held. After the plaintiffs had rested their case, on 20 September 1955 the defendants moved for the dismissal of tho complaint on the ground of estoppel by judgments. This motion was denied on 1 October 1955. On 4 June 1957 the defendants filed a statement and an amended answer alleging that in' a previous action (civil case No. 2004) brought by the defendants against Juan Garchitorena, a brother and coheir of the plaintiffs, concerning ownership or title to the parcels of land litigated herein, they (the defendants) were declared owners thereof, and praying that they be so declared, and that the plaintiffs be ordered to pay them for damages and attorney's fees as itemized in their counterclaim. On 7 June 1957 the plaintiffs replied to the amended answer. Trial was resumed. After the testimony of the first witness presented by the defendants, on 26 November 1957 the Court found that Juan Garchitorena, being in possession of the parcels of land in litigation, was an indispensable party, and ordered the plaintiffs to amend their complaint to implead him as defendant and to file the amended complaint within ten days from 26 November 1957. The ten-day period having lapsed without the plaintiffs filing the required amended complaint, on 4 February 1958 for failure to prosecute' the Court dismissed the case with costs. A motion for reconsideration, to which the defendants objected, was denied. From the dismissal of the complaint the plaintiffs

appealed to the Court of Appeals (CA.-G.R. No. 23600) which certified the case to this Court for only a question of law is involved.

To order an amendment to a complaint within a certain period of time in order to implead as party plaintiff or defendant one who is not a party to the case lies within the discretion of the Court. And where it appears that the person to be impleaded is an indispensable party, the party to whom such order is directed has no other choice but to comply with it. His refusal or failure to comply with the order is a ground for the dismissal of his complaint pursuant to section 3, Rule 30, of the Rules of Court which provides:

* * * When plaintiff fails * * * to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. * * * (Italics supplied.)

In *Bautista vs. Teodoro, Jr.*, 54 Off. Gaz. 619, this Court upheld the dismissal by the trial court of a complaint for failure of the plaintiff to comply with its order, either to amend her complaint or to file a bill of particulars within ten days from receipt of notice and within an extension of time prayed for by her and granted by the court.

The order appealed from is affirmed, with costs against the appellants.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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