

VALENTIN R. MALINAO, PETITIONER, VS. JUAN L. BOCAR, AS JUDGE OF FIRST INSTANCE OF CEBU, JOSE AVILA, DIEGO CAÑIZARES AND JESUS AVILA, RESPONDENTS.

G.R. No. L-4708. June 30, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking the annulment of an order of respondent Judge dated February 9, 1951, admitting the third party complaint filed by Jose Avila and requiring the clerk of court to issue the corresponding summons to Valentin R. Malinao, Jesus Avila and Diego Cañizares who were made parties-defendants therein and to require them to answer within the reglementary period.

The court granted the writ of preliminary injunction prayed for in the petition upon petitioner filing a bond in the amount of P500.

On June 15, 1950, Valentin R. Malinao filed an action against Jose Avila in the municipal court of Cebu to recover his commission of 5 per cent on the first payment received by the latter from the received by the latter from the Philippine War Damage Commission in accordance with an agreement entered into between them.

On June 20, 1950, Jose Avila filed an answer with a counterclaim stating therein that the plaintiff is not entitled to recover the commission he is claiming as the whole work necessary for the approval of his claim with the Philippine War Damage Commission had been undertaken by his son Jesus Avila and his son-in-law Diego Cañizares, the intervention of the plaintiff having consisted merely in typing the claim and in submitting it to said office, praying as a consequence thereof that the amount of P1,242.87 he had advanced to the plaintiff be returned to him, with the corresponding legal interests.

After trial on the merits, at which both parties have presented their evidence, the court rendered judgment for the plaintiff ordering the defendant to pay in full the amount prayed for in the complaint.

After the case had been elevated on appeal to the Court of First Instance, Jose Avila reiterated the answer he had filed in the municipal court, which was later amended, and on December 12, 1950, he filed a motion asking for authority to file a third party complaint against the plaintiff and his two children, Jesus Avila and Diego Cañizares, alleging therein that it becomes necessary that his two aforesaid sons be made, parties-defendants for the reason that these two had claimed from him the payment of the same commission claimed by the plaintiff in his complaint and that, notwithstanding his willingness to pay the commission allowed by law, he cannot very well do so because of the conflicting claims of his two sons on one hand and the plaintiff on the other. The court having granted the motion despite the vigorous objection interposed thereto by the plaintiff, the latter recurs now to this Court contending that the respondent Judge has committed an abuse of discretion in granting the motion.

It should be noted that when this case was decided on the merits by the municipal court of Cebu, defendant Jose Avila presented as witnesses his son Jesus Avila, and his son-in-law Diego Cañizares, who testified to substantiate

the claim of Jose Avila that all the work relative to the preparation concerning his claim with the Philippine War Damage Commission had been prepared by his said two sons, and not by the plaintiff, and, therefore, plaintiff is not entitled to the commission of 5 per cent he is claiming in the complaint. But when the case was elevated to the Court of First Instance, defendant Jose Avila, not contented with reiterating his special defense relative to the alleged services rendered by his two sons, filed a third party complaint in which he prayed that his two sons be made parties-defendants for the reason that they had claimed from him the same commission subject-matter of the action and, therefore, there is need for them to intervene to determine the merits of their conflicting claims.

In our opinion, this step is not necessary, being merely a dilatory move, because the conflicting claims, if any, existing between the two sons of the defendant on one hand and the plaintiff on the other, could be as well threshed out by presenting the oft-mentioned sons as witnesses at the trial as it was done by the defendant in the municipal court. If after the presentation of the evidence the court finds that the claim of the defendant is true and the commission authorized by law should be given to his two sons, the only alternative left to the court would be to dismiss the complaint and authorize the defendant to pay the commission to his two sons. There is no need of any third party complaint, nor of any action for interpleading, as defendant has done in the present case.

Moreover, the circumstances obtaining in this case clearly point to the conclusion that this attempt made by the defendant to bring his two sons into this case is but an eleventh hour scheme to defeat the claim of the plaintiff. Thus, while this case was pending in the municipal court, the defendant did not allege in his answer that his two sons demanded from him the payment of the 5 per cent commission authorized by law because of the alleged services rendered by them in connection with his claim with the Philippine War Damage Commission. He merely contended that much of the work concerning the prosecution of said claim was done by them and not by the plaintiff for which reason he is strongly opposed to the payment of the commission claimed by him. It is only now that he avers for the first time that his sons had demanded payment of the commission claimed by the plaintiff and so he wants them to intervene as parties in this case. However, we are skeptic about this claim of the defendant and have reasons to doubt his sincerity in view of the fact that, according to the decision of the municipal court from which this case originated, the two sons of the defendant refused to receive any amount from him for the services they have rendered, which circumstance indicates that this alleged claim of the two sons has been conceived only in the last minute in an attempt to defeat the claim of the plaintiff.

Another reason why in our opinion this petition for interpleading should not be entertained is the fact that such a move was taken by the defendant for the first time in the Court of First Instance. This petition for interpleading is tantamount to a new defense not set up in the court of origin because its purpose is to see that the commission subject of the complaint be paid not to the plaintiff but to the sons of the defendant. This is a defense which the defendant never raised in the municipal court. The same cannot now be raised for the first time in the Court of First Instance under the well known principle that in cases appealed from an inferior court to a Court of First Instance the parties can neither change the cause of action or defenses they have pleaded in the inferior court nor add new ones in their pleadings, even if the case is to be tried de novo.

"As above stated, with the exception of the complaint, the parties must file new pleadings in the Court of First Instance, and, of course, the plaintiff may also file an amended complaint, if he so desires, and the question arises as to whether the parties may, in such new pleadings, change or amend the causes of action or defenses that have been pleaded in the inferior court. The Supreme Court laid down the following rulings:

(1) The parties cannot allege in their pleadings in the Court of First Instance causes of action or defenses of which the inferior court had no jurisdiction.

(2) The parties cannot allege in their new pleadings causes of action or defenses that have not been pleaded in the inferior court. For instance, plaintiff in the inferior court sought, in his complaint, the recovery of

possession of a building and a lot. In his amended complaint in the Court of First Instance, he cannot claim, in addition thereto, damages for illegal possession by the defendant of the building and the lot. And, if the defendant in the inferior court pleaded no special defense, he cannot, in his answer in the Court of First Instance, plead a special defense founded on the improvements he had made on the property.

(3) The parties in the Court of First Instance cannot, in their new pleadings, change the nature of the causes of action or defenses pleaded in the inferior court." (Moran, Comments on the Rules of Court, Vol. 1, 3rd ed. p. 800).

For the foregoing reasons, we are of the opinion that the respondent Judge has abused his discretion in issuing the order subject of the present petition for certiorari.

Wherefore, the court hereby sets aside the order of the respondent Judge dated February 9, 1951, admitting the third party complaint filed by respondent Jose Avila, with costs against said respondent.

The writ of injunction issued is hereby declared final.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

CONCURRING

PADILLA, J.:

I concur only in the result for the reason that the so-called third-party complaint is not the kind authorized by Rule 12, nor is it on interpleader as provided for in Rule 14.

Jose Avila, the defendant, is the party called upon by Valentin R. Malinao, the plaintiff, to answer for and pay the 5 per cent commission for services rendered. To pay that claim if established by the plaintiff, the defendant has no right to call upon and ask for contribution from his son Jesus Avila and son-in-law Diego Cañizares, because he alone is to pay it, being the only one bound to do so; he has no right to ask for indemnity from his son and son-in-law even if he had paid them the whole amount of the commission or part thereof; he has no right to call upon his son and son-in-law, because there has been no subrogation as this term is understood in civil law, no change of creditor having taken place, and if the term be construed to include substitution of debtor, this cannot take place without the consent of the creditor; and should he be ordered to pay the claim of the plaintiff, he could not call upon and compel his son and son-in-law to do so. It is a case where Rule 12 does not apply and may not be invoked.

It is not an interpleader, as provided for in Rule 14, because if Jose Avila was really willing and ready to perform his obligation—to pay the commission—and not to resist its fulfillment, instead of writing to be sued, he should have brought an action pleading that he acknowledges to be indebted for services rendered, which is 5 per cent commission on the amount of war damage awarded and paid to him, and is willing and ready to pay it but that there are conflicting claimants or parsons who claim are entitled to the commission and praying that they interplead and litigate their several claims among themselves.

DISSENTING

LABRADOR, J.:

I beg to disagree with the decision of the majority penned by Mr. Justice Bautista Angelo.

The record discloses that the petitioner herein filed an action in the municipal court of Cebu City to recover from respondent Jose Avila the sum of P828.58, which represents the balance of his 5 per cent commission on the amount that defendant had received from the Philippine War Damage Commission. In the said court the defendant presented a special defense that all that the plaintiff did was to typewrite the claim and submit the same to the War Damage Commission; that a great amount of the work in the preparation of the claim, as well as of the plans, affidavits, and documents submitted to substantiate it were prepared by Jesus Avila, defendant's son, and Attorney Diego Cañizares, defendant's son-in-law. Judgment having been rendered by the municipal court in favor of the plaintiff, and the case having reached the Court of First Instance on appeal, the defendant again set up the same special defenses, further alleging as counterclaim that Jesus Avila and Attorney Diego Cañizares are entitled to a portion of the sum of P1,242.87 that had already been paid to the plaintiff as commission. Subsequently, the answer was amended, and for the reason that Jesus Avila and Attorney Diego Cañizares "had rendered services in the preparation, accomplishment, and substantiation of defendant's war damage claim," and are now claiming from the defendant compensation for their services, defendant was filing a third party complaint to order plaintiff Malinao, Jesus Avila, and Attorney Diego Cañizares to interplead and litigate their several claims to the 5 per cent commission. In justification for this move section 108 of the Act of Congress, entitled "An Act for the Rehabilitation of the Philippines," is cited, which provides that the remuneration for services rendered in connection with any claim for damage shall not exceed 5 per cent of the compensation paid by the Commission on account of the claim. Thereupon, defendant filed what he denominated third party complaint, to which plaintiff Malinao filed an opposition, but the court overruled the opposition and admitted the so-called third party complaint and required plaintiff Malinao, Jesus Avila, and Attorney Diego Cañizares to interplead and file their respective answers. Both Cañizares and Jesus Avila filed their answers to the complaint in interpleading. Malinao asked for a reconsideration of the court's order admitting the so-called third party complaint, and upon the denial of said motion presented the present petition, alleging that the order of the court admitting the so-called third party complaint, which required petitioner Malinao and Jesus Avila and Attorney Diego Cañizares to interplead, was issued by the trial judge without or in excess of his jurisdiction, and with grave abuse of discretion.

It is, of course, apparent that the petition of defendant and respondent herein Jose Avila to be allowed to file a third party complaint was improperly so designated, because the third party defendants are not being made responsible in part or subsidiarily for plaintiff's claim; in truth and in effect, it was a petition requiring plaintiff Malinao, Jesus Avila, and Diego Cañizares to interplead, authorized under Section 1, Rule 14, of the Rules of Court. But the name given to the petition is immaterial, as its aim and purpose is apparent. (Section 17, Rule 15, Rules of Court.) The subject matter of the petition for interpleading is the sum representing 5 per cent of the amount paid as war damage claim to respondent Jose Avila, which is expressly prohibited by law to be exceeded. And since defendant Jose Avila claims to have utilized the services of three men, namely, Malinao, Jesus Avila, and Cañizares, in connection with the approval of his claim, and inasmuch as the law further penalizes a claimant who pays more than that amount, defendant Jose Avila was evidently forced to require all the three claimants to interplead, in order to determine their respective shares or rights in the commission fixed by law. It is also to be noted that defendant Jose Avila expressly stated in his answer that he was ready and willing to pay the full 5 per cent of what he had received as war damage claim, thus complying with the provision that he "claims no interest whatever in the subject matter." Under these circumstances, it is evident that the only remedy available to him, in order to save himself from paying additional amounts to Jesus Avila and Cañizares, and from violating the law, was to require the three claimants to interplead.

It is worthy to note that the petition for interpleading is not a new issue distinct and different from those raised in the municipal court and, therefore, improperly raised. (Bernardo vs. Genato, 11 Phil. 603; Beech vs. Jimenez, 12 Phil. 212; Tu Lay vs. Galmes, 40 Phil. 651.) The defense or issue raised therein was already raised in the municipal court as a special defense. Hence, there can be no objection that new issues or defenses are being raised. To say that it is a last-ditch plea is, therefore, not exactly correct. It is true that in the Justice of the Peace Court, it was called a special defense, and now it is a petition for interpleading. The substance of the issue is to us the same. To refuse to pay the full amount of a claim because others had helped in the preparation of the claim papers, is the same thing as refusing to pay the full claim because others who had helped should be entitled to the balance. If we hold that the second is a new issue, are we not adhering to a technicality to prevent the clarification and presentation of the real issue?

The majority decision maintains that Jose Avila's claim that Jesus Avila and Diego Cañizares were entitled to share in the 5 per cent commission was fully raised or presented in the municipal court by the use of Jesus Avila and Diego Cañizares as witnesses for him. We do not believe that this arrangement properly presents the issue that Jose Avila wanted to present, namely, that two other persons were claiming a portion of the 5 per cent commission on the war damage claim. Without the presentation of a petition for interpleading, and if Jesus Avila and Diego Cañizares were utilized merely as witnesses for defendant Jose Avila, it may happen that the court may render judgment requiring defendant Jose Avila to pay the full amount of 5 per cent to plaintiff, which the municipal court actually sentenced the defendant to pay. Furthermore, failure on his part to raise that as an issue in a petition for interpleader would subject him to liability to the other claimants, Jesus Avila and Diego Cañizares, even after he had already paid the full amount of 5 per cent commission to plaintiff Malinao, in consequence of which he could be subject to prosecution for violating the United States law. Under these circumstances, it is apparent that his only remedy was to require the three claimants to interplead.

The majority also holds that during the pendency of the action in the Justice of the Peace Court, the son and son-in-law of defendant did not claim their share. It is a fact, however, that once the case was brought to the Court of First Instance, they woke up to their rights and made the claim for their share. Should the defendant be obliged to cross his arms and permit plaintiff to recover the 5 per cent commission without being able to bring up this new claim of the defendants in interpleading, which in effect he had already intimated in his defense in the Justice of the Peace Court? Our rules allow the presentation of new causes of action or new defenses by supplemental pleadings, provided the same are in aid of the original action or defense. (Section 5, Rule 17, Rules of Court.) The claims of the defendants in interpleading developed when the case reached the Court of First Instance and are in aid of the defense because if payment is to be due the new parties in interpleading, same must be deducted from the amount of plaintiff's claim.

It is also stated in the majority decision that the petition for interpleading was made for the purposes of delay. I think it was absolutely necessary to file said petition to present the issues in the best form and manner, with justice to all parties concerned. The party plaintiff herein could have proceeded to the trial, instead of suing out this writ of certiorari, and thus avoid the delay incident to the proceedings in this Court. It was petitioner, in fact, that caused the delay in the proceedings to prevent respondent Jose Avila to raise the issue implied in his defense. The trial court, in admitting the petition for interpleading and requiring the three claimants to interplead, did what was best in order to place the issues squarely before the parties for their clearer understanding and comprehension. I do not believe, therefore, that the trial judge acted without or in excess of his jurisdiction, or with grave abuse of discretion, in admitting the petition for interpleading. On the contrary, the procedure followed by him seems to me to be the most expeditious manner of presenting the actual issue advanced by the defense for hearing and decision.

The majority would go into the merits of the case to determine the propriety of the pleadings. We are not prepared to follow such a procedure. Pleadings represent the respective claims or defenses of the parties merely, not their rights, and are framed to determine and fix the issues, not to determine their rights. We refuse to go into, or prejudge, the merits of the rights of the parties as disclosed by the record and control their pleadings thereby. A trial of an appealed case from the Justice of the Peace Court is a trial de novo, and the evidences adduced thereat are not conclusive upon the parties; hence, the said evidence may not be looked into to determine the propriety of the pleadings.

I, therefore, hold that the petition for certiorari should be denied, with costs against the petitioner.

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