

PEDRO GAYON, PLAINTIFF-APPELLANT, VS. SILVESTRE GAYON AND GENOVEVA DE GAYON, DEFENDANTS-APPELLEES.*G.R. No. L-28394. November 26, 1970*

Ponente: CONCEPCION, C.J.

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Appeal, taken by plaintiff Pedro Gayon, from an order of the Court of First Instance of Iloilo dismissing his complaint in Civil Case No. 7334 thereof.

The records show that on July 31, 1967, Pedro Gayon filed said complaint against the spouses Silvestre Gayon and Genoveva de Gayon, alleging substantially that, on October 1, 1952, said spouses executed a deed - copy of which was attached to the complaint, as Annex "A" - whereby they sold to Pedro Gelera, for the sum of P500.00, a parcel of unregistered land therein described, and located in the barrio of Cabubugan, municipality of Guimbal, province of Iloilo, including the improvements thereon, subject to redemption within five (5) years or not later than October 1, 1957; that said right of redemption had not been exercised by Silvestre Gayon, Genoveva de Gayon, or any of their heirs or successors, despite the expiration of the period therefor; that said Pedro Gelera and his wife Estelita Damaso had, by virtue of a deed of sale - copy of which was attached to the complaint, as Annex "B" - dated March 21, 1961, sold the aforementioned land to plaintiff Pedro Gayon for the sum of P614.00; that plaintiff had, since 1961, introduced thereon improvements worth P1,000; that he had, moreover, fully paid the taxes on said property up to 1967; and that Articles 1606 and 1616 of our Civil Code require a judicial decree for the consolidation of the title in and to a land acquired through a conditional sale, and, accordingly, praying that an order be issued in plain-tiff's favor for the consolidation of ownership in and to the afore-mentioned property.

In her answer to the complaint, Mrs. Gayon alleged that her husband, Silvestre Gayon died on January 6, 1954, long before the institution of this case; that Annex "A" to the complaint is fictitious, for the signature thereon purporting to be her signature is not hers; that neither she nor her deceased husband had ever executed "any document of whatever nature in plaintiff's favor"; that the complaint is malicious and had embarrassed her and her children; that the heirs of Silvestre Gayon had to "employ the services of counsel for a fee of P500.00 and incurred expenses of at least P200.00"; and that being a brother of the deceased Silvestre Gayon, plaintiff "did not exert efforts for the amicable settlement of the case" before filing his complaint. She prayed, therefore, that the same be dismissed and that plaintiff be sentenced to pay damages.

Soon later, she filed a motion to dismiss, reproducing substantially the averments made in her answer and stressing that, in view of the death of Silvestre Gayon, there is a "necessity of amend-ing the complaint to suit the genuine facts on record." Presently, or on September 16, 1967, the lower court issued the order appealed from, reading:

"Considering the motion to dismiss and it appearing from Exhibit 'A' annexed to the complaint that Silvestre Gayon is the absolute owner of the land in question, and considering the fact that Silvestre Gayon is now dead and his wife Genoveva de Gayon has nothing to do with the land subject of plaintiff's complaint, as prayed for, this case is hereby dismissed, without pronouncement as to costs."[1]

A reconsideration of this order having been denied, plaintiff interposed the present appeal, which is well taken.

Said order is manifestly erroneous and must be set aside. To begin with, it is not true that Mrs. Gayon "has nothing to do with the land subject of plaintiff's complaint." As the widow of Silvestre Gayon, she is one of his compulsory heirs[2]; and has, accordingly, an interest in the property in question. Moreover, her own motion to dismiss indicated merely "a necessity of amending the complaint," to the end that the other successors-in-interest of Silvestre Gayon, instead of the latter, be made parties in this case. In her opposition to the aforesaid motion for reconsideration of the plaintiff, Mrs. Gayon alleged, inter alia, that the "heirs cannot represent the dead defendant, unless there is a declaration of heirship." Inasmuch, however, as succession takes place, by operation of law, "from the moment of the death of the decedent"[3] and "(t)he inheritance includes all the property, rights and obligations of a person which are not extinguished by his death,"[4] it follows that if his heirs were included as defendants in this case, they would be sued, not as "representatives" of the decedent, but as owners of an aliquot interest in the property in question, even if the precise extent of their interest may still be undetermined and they have derived it from the decedent. Hence, they may be sued without a previous declaration of heirship, provided there is no pending special proceeding for the settlement of the estate of the decedent.[5]

As regards plaintiff's failure to seek a compromise, as an alleged obstacle to the present case, Art. 222 of our Civil Code provides:

"No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in article 2035."

It is noteworthy that the impediment arising from this provision applies to suits "filed or maintained between members of the same family." This phrase, "members of the same family," should, however, be construed in the light of Art. 217 of the same Code, pursuant to which:

"Family relations shall include those:

- (1) Between husband and wife;
- (2) Between parent and child;
- (3) Among other ascendants and their descendants;
- (4) Among brothers and sisters."

Mrs. Gayon is plaintiff's sister-in-law, whereas her children are his nephews and/or nieces. Inasmuch as none of them is included in the enumeration contained in said Art. 217 - which should be construed strictly, it being an exception to the general rule - and Silvestre Gayon must necessarily be excluded as party in the case at bar, it follows that the same does not come within the purview of Art. 222, and plaintiff's failure to seek a compromise before filing the complaint does not bar the same.

WHEREFORE, the order appealed from is hereby set aside and the case remanded to the lower court for the inclusion, as defendant or defendants therein, of the administrator or executor of the estate of Silvestre Gayon, if any, in lieu of the decedent, or, in the absence of such administrator or executor, of the heirs of the deceased Silvestre Gayon and for further proceedings, not inconsistent with this decision, with the costs of this instance against defendant-appellee, Genoveva de Gayon.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Dizon and Makasiar, JJ., on leave.

[1] Record on Appeal, p. 14.

[2] Art. 887(3) of our Civil Code.

[3] Arts. 774 and 777 of our Civil Code; *Fule v. Fule*, 46 Phil. 317; *Cuevas v. Abesamis*, 71 Phil. 147; *Villaluz v. Neme*, L-14676, Jan. 31, 1963; *Aznar v. Duncan*, L-24365, June 30, 1966; *Phil. Banking Corp. v. Lui She*, L-17587, Sept. 12, 1967; *Hrs. of Pedro Reganon v. Imperial*, L-24434, Jan. 17, 1968.

[4] Art. 776 of our Civil Code.

[5] See *Hernandez v. Padua*, 14 Phil. 194; *Uy Coque v. Sioca*, 45 Phil. 430; *Bonnevie v. Pardo*, 59 Phil. 486; *Government v. Serafica*, 61 Phil. 93; *De Vera v. Galauran*, 67 Phil. 213, 214; *Atun v. Nuñez*, 97 Phil. 762, 765; *Velarde v. Paez*, 101 Phil. 376, 382; *Magdalera v. Benedicto*, L-9105, Feb. 28, 1958.

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