

FLORENTINO NAVARRO AND BEATRIZ VINOYA, PETITIONERS, VS. HON. ELOY BELLO, JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, JUAN CABUANG, FLORENTINA BAUTISTA, FLORENCIO GALICIA...*G. R. No. L-11647. January 31, 1958*

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

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This is a petition for certiorari and mandamus with preliminary injunction seeking the annulment of a decision of the Court of First Instance of Pangasinan dated July 30, 1956, dismissing the complaint in Civil Case No. 13099, adjudging the respondents-defendants owners of two parcels of land described in the complaint, and awarding damages to the latter for the unlawful usurpation of the disputed lots by the petitioners.

It appears that the petitioners-plaintiffs filed a complaint on September 30, 1954, with the Court of First Instance of Pangasinan (Civil Case No. 13099) praying for the annulment of transfer certificates of title Nos. 15967 and 15968 and the corresponding deeds of sale executed by respondents Florencio Galicia and Consolacion Bautista in favor of respondents Juan Cabuang and Florentino Bautista over lots Nos. 20774 and 32540, of the San Carlos Cadastre, claiming ownership of said parcels of land, and alleging actual possession. Respondents filed their answer to the amended complaint on November 24, 1954, also claiming ownership over the questioned lots, with a counterclaim for damages allegedly arising out of the unlawful usurpation of possession of the above described parcels of land by the petitioners through force and intimidation.

No answer to the counterclaim having been filed within the time prescribed by the Rules, upon petition of the respondents, the petitioners (plaintiffs below) were declared in default in an order of the lower court dated February 2, 1955, and the same order commissioned the deputy clerk of court to receive the evidence of the defendants. No notice of this order was furnished the petitioners or their counsel. The reception of evidence was made on February 8, 1955, and in accordance with the evidence submitted by the respondents, the court rendered decision adjudicating the defendants' counterclaim for damages, declaring the respondents owners of the disputed parcels of land, and dismissing the complaint. Copy of the decision was received by the petitioners on August 7, 1956.

On September 3, 1956, petitioners filed their first motion for reconsideration to set aside the decision and order of default; it was denied, and notice of such denial received by the petitioners on October 1, 1956. A second motion for reconsideration filed on October 3, 1956, having been also denied by the lower court, notice of appeal was filed by petitioners on October 5, 1956, the same day when the notice of denial of the second motion for reconsideration was received by them, and with the notice of appeal they asked for a fifteen-day extension within which to file the record on appeal and appeal bond, which was granted. But upon objection interposed by the respondents, the court in its order of October 26, 1956, denied the approval of the record on appeal on the ground that the decision sought to be reviewed has become final and that the plaintiffs having been declared in default,

they have no right to appeal unless and until the order of default is revoked and set aside.

There was no need for petitioners to answer respondents' counterclaim, considering that plaintiffs, in their complaint, claimed not only ownership of, but also the right to possess, the parcels in question, alleging that sometime in May, 1954, defendants, through force and intimidation, wrested possession thereof from their tenants, and that it was upon a writ of possession issued by the Court of First Instance of Pangasinan that they were placed back in possession by the provincial sheriff. These averments were denied by defendants in their answer, wherein they asserted ownership in themselves and illegal deprivation of their possession by plaintiffs, and as counterclaim, prayed for damages allegedly suffered because of plaintiffs' alleged usurpation of the premises.

It thus appears that the issues of the counterclaim are the very issues raised in the complaint and in the answer, and said counterclaim is based on the very defenses pleaded in the answer. To answer such counterclaim would require plaintiffs to replead the same facts already alleged in their complaint.

But in any event, whether or not plaintiffs have answered defendants' counterclaim, they have the right to prove the averments of their complaint, including their claim that it was by court order that they secured possession of the parcels in question from defendants. And if plaintiffs are able to prove such allegations, then the court must dismiss defendants' counterclaim for damages, since the illegal usurpation of defendants' possession allegedly committed by plaintiffs, which is the basis of the counter-claim, would not have been proved. In short, the issues of the counterclaim are so inseparable from those of the complaint and the answer that such counterclaim partakes of the nature of a special defense which, even if not specifically challenged by plaintiffs in a reply, is deemed controverted (Rule 11, sec. 1, Rules of Court; *Rosario vs. J. Martinez*, 92 Phil., 1064; *Luna vs. Apacible*, 79 Phil., 8). There was, therefore, no occasion for plaintiffs' default on defendants' counterclaim, and the order of the court below declaring them in default, as well as the judgment by default, is improper and void.

It is plain from the records that the complaint and the answer have not as yet been set for trial in the court below. Only after the issues of the complaint and answer are tried, and the parties heard, may the court resolve the defendants' counterclaim for damages. If the court finds for plaintiffs, defendants' defenses, and counter-claim, must necessarily fail. On the other hand, if the court finds for the defendants, then plaintiffs' complaint must be dismissed, defendants would be declared owners of the lands in question, and they would be awarded damages under their counterclaim. But until and unless the whole case is heard on the merits, the court a quo can not decide on defendants' counterclaim, without depriving plaintiffs their day in court.

Even if plaintiffs had really defaulted on the counter-claim, still the court was bound to limit its decision to the specific reliefs ask for. Sec. 9, Rule 35, of the Rules of Court provides:

"A judgment entered by default shall not exceed the amount or be different in kind from that prayed for in the demand for judgment * * *."

Since the counterclaim was set to recover damages caused by the petitioners alleged entering the land in question through force and intimidation, the court could, at most, award the damages sought; hence, in adjudging also the defendants, Juan Cabuang and Florentina Bautista, to be the owners of the two parcels of land described in the complaint, when what was tried was the counterclaim, the court below exceeded its jurisdiction (See *Lim Toco vs. Fo Fay*, 80 Phil., 166).

Since the ownership of the disputed land was put in issue by the allegations of the complaint and the special defenses in the answer, the correct procedure, assuming that the declaration of default was properly entered, should have been for the trial court to set the complaint and answer for hearing. The lower court, even in the case of a true default on the counterclaim, could not deny the petitioners-plaintiffs the right to be heard and produce

evidence in support of their complaint, as that pleading was valid and had not been stricken from the records. Their having defaulted on the counterclaim, if they did so at all, did not operate to deprive the plaintiffs from any standing or remedy in court in connection with their complaint.

Petitioners' timely motions for reconsideration and new trial were denied by the lower court, first, because it said the petitioners had lost their standing in court in view of the order of default, and second because such motions were not accompanied by affidavits of merits. The first argument is, in view of what we have already stated, invalid and untenable. As for the second, we have already ruled that affidavits of merits are not necessary when the granting of the motion is not discretionary with the court but is demandable as of right, as where the movant has been deprived of his day in court, through no fault or negligence of his own (*Valerio vs. Tan, et al.*, 97 Phil. 558). This rule applies in the instant case, since petitioners have been deprived of their day in court through an illegal order of default.

Wherefore, the writ of certiorari is granted, and the decision of July 30, 1956 of the Court of First Instance of Pangasinan in its case No. 13099 is hereby set aside, and said court is directed to proceed with the trial of the entire case on the merits. Costs against respondents Cabuang and Bautista. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.

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