

**ALFONSO RILI AND TRINIDAD VDA. DE MIRAFLORES, PLAINTIFFS
AND APPELLANTS, VS. CIRIACO CHUNACO, ET AL., DEFENDANTS
AND APPELLEES.**

G.R. No. L-6630. February 29, 1956

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

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

On August 18, 1944, plaintiffs Alfonso Rili and Trinidad Vda. de Miraflorea filed a complaint in the Court of First Instance of Camarines Sur to be declared owners of two parcels of land located in barrio Batia, municipality of Libmanan, Camarines Sur, and to recover damages from defendant Ciriaco Chunaco for his alleged illegal possession of said lands. Defendant Chunaco answered with a mere general denial of the allegations of the complaint, so plaintiffs moved for judgment on the pleading. Wherefore, on March 81, 1948, the Court below rendered judgment as follows:

"The above averments not being specifically denied by the defendant Ciriaco Chunaco in his answer to the re-amended complaint, dated August 30, 1944, they are deemed admitted (Rule 8, section 8, Rules of Court), and therefore no evidence is required to prove these facts except the amount of damages which 'necessarily should be supported by evidence.

In view of all the foregoing considerations, judgment is hereby rendered in favor of the plaintiffs and against the defendants (a) declaring the auction sale of the two parcels of land in question illegal, null and void; (&) declaring the plain tiffs Alfonso Rili and David A. Garcia the lawful owners of the two parcels of land described in the complaint with the right to possess the same; and (c) ordering the defendant Ciriaco Chunaco to pay the costs of the suit. So ordered." (Rec. App. p. 20.)

On appeal to this Court by the defendant, the appeal was dismissed and the judgment of the Court below affirmed.

After the judgment on the pleadings had become final and executory, plaintiffs moved that the case be set for hearing with respect to the amount of damages suffered by them. (The hearing of plaintiffs' motion was postponed for several times at the instance of defendant's counsel but without objection on the part of plaintiffs. Then on December 16, 1952, defendant filed a motion to dismiss plaintiff's claim for damages on the ground that judgment having become final and executory, the Court had lost jurisdiction to try said claim, and that plaintiffs had waived damages by their failure to prove the same before the judgment became final. The lower Court found defendant's motion to dismiss meritorious and dismissed plaintiff's claim for damages. Hence, this appeal by plaintiffs.

The appeal is without merit.

Under section 10 of Rule 38, the plaintiff may ask for judgment on the pleadings whenever the answer fails to tender an issue or otherwise admits the material allegations of his complaint. ' One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations and without giving the opposing party an opportunity to introduce evidence must therefore be understood to rest his motion for judgment only on such allegations as are admitted in the pleadings (Evangelista vs. De la Rosa, 76 Phil., 115; Bauermann vs. Casas, 10

Phil., 386). Appellants moved for a judgment on the pleadings because defendant impliedly admitted the allegations of their complaint by failure to deny them specifically in his answer. Under section 8, Rule 9, however, allegations regarding the amount of damages are not deemed admitted even if not specifically denied, and so much be duly proved. Appellants did not offer to present evidence to prove their damages but merely asked for judgment on the pleadings. Hence, they must be considered to have waived or renounced their claim for damages, and to have consented to such judgment as was warranted by the material allegations Of their complaint that are deemed admitted by the defendant's answer.

But assuming that plaintiffs-appellants could still prove their damages even after asking for judgment on the pleadings, they could do so only before said judgment became final and executory, because thereafter, the lower Court lost control over its judgment save to order, its execution. When appellants sought to have this case reheard for the purpose of proving their damages, the judgment of the trial court had already become final and executory. Consequently, the court below had already lost jurisdiction to alter or amend the same so as to include therein an award of damages in appellant's favor.

Appellants argue that there is an express reservation of their right to prove damages both in their motion for judgment on the pleadings and in the decision of the lower Court. This claim is incorrect and untenable. Nowhere in their motion for judgment on the pleadings (Rec. App. 11-14) did appellants ask that their right to prove damages be reserved; while the decision of the court below precisely did not award damages to them because the amount thereof is not deemed admitted and "necessarily should be supported by evidence" (Rec. App. p. 20). The lower Court's refusal to award damages to appellants in the absence of proof thereof is but a reiteration of our ruling in *Lichauco vs. Guash*, 76 Phil., 5, that although plaintiff has the right to ask for judgment on the pleadings if the defendant's answer is a mere general denial, the amount of damages is not deemed admitted and the trial court can not award any damages in the absence of proof as to the amount thereof.

Finally, appellants urge that defendant impliedly waived whatever defenses he had against their right to still recover damages, when he asked for several continuances of the hearing of their motion to be allowed to prove such damages. Appellants lose sight of the fact that what had been postponed several times at the instance of defendant's counsel was not the actual hearing of their claim for damages, but the hearing of their motion to be allowed to prove the same. In other words, the continuances merely deferred the discussion of the question whether or not appellants still had the right to present evidence on the amount of damages, and thus could not be an admission that appellants still had such right. At the final date set for the trial of this question, defendant naturally had the right to argue against plaintiffs' claim that they could still prove their damages; or he could do so at any time before trial by written manifestation or memorandum, which in fact he did when he filed his motion to dismiss plaintiff's claim for damages on the ground of *res judicata*.

The order appealed from is, therefore, affirmed, with costs against plaintiffs-appellants. So ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion, and Endencia, JJ., concur.

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