

J. M. TUASON & CO., INC., REPRESENTED BY GREGORIO ARANETA INC., PLAINTIFF AND APPELLEE, VS. JOSE RAFOR, DEFENDANT AND APPELLANT.

G. R. No. L-15537. June 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal interposed by defendant Jose Rafor from the decision of the Court of First Instance of Quezon City (in Civil Case No. Q-3624) ordering him and all persons claiming under him to vacate the lot in question owned by plaintiff J. M. Tuason & Co., Inc., to remove his 2 houses and other constructions thereon, to restore possession thereof to plaintiff, to pay the latter the sum of P50.00 a month from 1950, until plaintiff is restored to its possession, and to pay the costs of the suit.

In the complaint originally filed in the Court of First Instance of Quezon City, it is alleged, among others, that plaintiff Tuason & Co. is the registered owner of a parcel of land known as the Santa Mesa Heights Subdivision, situated at Quezon City, covered by Transfer Certificate of Title No. 1267 (37686-Rizal) of the Register of Deeds of Quezon City, issued in its name; that as such registered owner, plaintiff had been in peaceful possession and enjoyment thereof, when sometime in 1950, defendant, without and against plaintiff's consent, through force, strategy, and stealth, unlawfully entered into the possession of a portion of 400 square meters, more or less, within said parcel of land of plaintiff, situated at Barrio North Tatalon, Quezon City, and constructed his 2 houses thereon; and that as a result of the acts of usurpation committed by defendant, plaintiff has suffered and will continue to suffer damages at the rate of P120.00 monthly, representing the fair rental value of its premises. Plaintiff prayed that judgment be rendered ordering defendant and all persons claiming under him to vacate the premises in question, remove his 2 houses and other constructions thereon, and restore possession thereof to plaintiff, and pay the latter the sum of P120.00 a month from the date of usurpation, until plaintiff is restored to its possession, and to pay the costs of the suit.

To this complaint, defendant filed his answer, alleging as special defenses, that even before 1873 up to his death, one Telesforo Deudorf was the sole owner and possessor of a parcel of land situated in Matalahib, Tatalon, and Masambong, Quezon City, with an area of 50 quinones, described in an abstract of the certificate of ownership recorded in the Registration Book of the Register of Deeds and Property during the Spanish regime, issued in favor of Telesforo Deudorf; that said deceased Telesforo Deudorf was in continuous, peaceful, and adverse possession of said property as absolute owner thereof until his death when he was succeeded in all his rights and interests therein by his son Tomas Deudorf, exclusively enjoying the crops produced thereon, until a portion thereof was sold, transferred, and conveyed to Agustin Torres, who succeeded him in all his rights of ownership and possession, which portion contained an area and is described in Tax Declaration No. 8524 of the assessment rolls of San Francisco del Monte, Quezon City; that as successor in interest of Tomas Deudorf, and while in continuous, peaceful, and adverse possession of the portion of land conveyed to him by Tomas Deudorf, Agustin Torres, on February 15, 1949, by way of absolute sale, conveyed and transferred to defendant a portion thereof of

approximately 250 square meters in area, as evidenced by a public instrument executed and acknowledged before a notary public; that immediately after said sale, defendant took possession of said property, and since then up to the present, has been in continuous, peaceful, and adverse possession thereof and has introduced considerable improvements thereon; that the land sold by Agustin Torres to defendant is part of the 400 square meter lot described in the present complaint; that plaintiff or its predecessor-in-interest has never been in possession of the property in question at any time, while defendant's predecessor-in-interest has always been in continuous, peaceful, and adverse possession thereof for more than 80 years as absolute owner; that sometime in 1950, Agustin Torres, predecessor-in-interest of defendant, died and his legal wife Rufina Guerrero succeeded to all his rights and interests over the land; that prior to his death, cases regarding the land were filed and docketed as Civil Cases Nos. Q-135, Q-169, Q-174, and Q-177 in the Court of First Instance of Quezon City, which cases were terminated by a Compromise Agreement dated March 16, 1953, wherein said Rufina Guerrero and other successors-in-interest of Telesforo Deudor renounced, ceded, and waived all their rights, title, and interests in the property, including the land already sold to herein defendant, in favor of plaintiff herein, in consideration of the sum of P1,201,063.00, which" were done without the knowledge and consent of defendant; that judgment was rendered in said cases based on said Compromise Agreement; that OCT No. 735 from which TCT 1267 (37868-Rizal) of plaintiff was derived, is null and void ab initio and, therefore, the present action has already prescribed; that plaintiff is not an innocent purchaser for value and said Compromise Agreement having been made in consideration of P1,201,063.00, is not legally a compromise agreement, but a contract of sale or cession and, therefore, plaintiff is now estopped and is deemed to have waived its right to invoke the indefeasibility of OCT No. 735 and all TCT's derived therefrom; and that said Compromise Agreement is a "negocio juridico con caracter translativo de derecho" and, as such, has all the effects of an absolute sale, and plaintiff became a second vendee in bad faith as it acquired said property knowing it had already been transferred to third persons and is aware that it was then in continuous, peaceful, and adverse possession of defendant. Defendant prayed for the dismissal of the complaint. As counterclaim, he prayed that OCT No. 735 and TCT No. 1267 (37686-Rizal) of plaintiff be declared null and void ab initio; that if defendant is declared not entitled to the land, that plaintiff be ordered to pay to him P1,200.00 as value of his improvements and to pay defendant P5,000.00 as damages and P3,000.00 as attorney's fees. This counterclaim was answered by plaintiff on February 26, 1959.

Issues having been joined, the case was set for hearing for March 17, 1959.

On March 16, 1959, however, defendant filed a motion to dismiss, on the ground that "there is another action pending between the same parties for the same cause", in that on February 27, 1959, Rufina Guerrero as successor-in-interest of Agustin Torres, predecessor-in-interest of defendant Rafor, filed a complaint (Civil Case No. Q-4057) in the Court of First Instance of Quezon City against herein plaintiff, asking for reconveyance to her of a lot of 4 quifiones in area which covers and includes the lot involved in the present action; that although said Rufina Guerrero is not a party to the present action she and defendant represent the same interest, the latter being her successor-in-interest; that the relief is founded on the same facts, and the title or essential basis of the relief in the present case and in that other case (Case No. Q-4057) are the same, and any judgment rendered in Case No. Q-4057 on the merits would be conclusive between the parties and could be pleaded in bar in the present case.

When the present case was called for hearing on March 17, 1959, defendant's counsel verbally moved for postponement of the hearing, on the ground that he has filed said motion to dismiss of March 16, 1959, but the court denied said motion to postpone "considering that there has already been an answer filed by the defendant in this case and that such motion to dismiss is only for purposes of delay". Hence, the case was heard and the parties presented their respective evidence.

On March 23, 1959, the court rendered a decision which reads:

"Plaintiff adduced evidence tending to establish the fact that it is a domestic corporation, duly organized and existing under the laws of the Philippines; that it is the registered owner of a parcel of land known as the Sta. Mesa Heights Subdivision and located at Quezon City, covered by Transfer Certificate of Title No. 1267 (Exh. A) of the Office of the Register of Deeds of Quezon City; that sometime in 1950, the herein defendant without and against the plaintiff's consent, through force, strategy and stealth, unlawfully entered into the possession of a portion of 400 square meters, more or less, of the aforesaid parcel of land of plaintiff situated at Barrio North Tatalon, Quezon City, and constructed his house thereon, as shown in the plan (Exh. B) and indicated therein as Exhibit B-1.

"Defendant, on the other hand, presented evidence tending to show that he acquired the premises of a deed of sale (Exh. 2) executed in his favor on February 15, 1949, and has been in possession of the same since then up to the present time; that as wife and successor in interest of the late Agustin de Torres, Rufina Guerrero was a party to the compromise agreement entered into by the parties in certain civil cases filed in court (Civil Cases Nos. Q-135, 139, 174, and 177 of the Court of First Instance of Quezon City) which were terminated by virtue of decision based on the compromise agreement.

"It appears, however, that the herein defendant Jose Rafor, is not a party to the aforesaid compromise agreement, nor is he a party to one of the above-mentioned civil cases. While it is true that there is a deed of sale executed by Agustin de Torres in, favor of the defendant herein, the same, however, is not a proper deed of sale for all purposes, because the subject matter thereof is a property which already titled to another party, not the vendor therein. As a matter of fact, the title of the property in question which is a portion of the lot of plaintiff has been issued to plaintiff since May 29, 1939, whereas the herein deed of sale exhibited by defendant covering a portion of 400 square meters within the said title of plaintiff has been executed only last February 15, 1949. There is no question, therefore, that the herein plaintiff is entitled to the possession of the property in question and recover the same from the defendant, and that the evidence of (record militates in favor of plaintiff and against the defendant in this case.

"Wherefore, judgment is rendered in favor of plaintiff, and against the defendant Jose Rafor, by ordering the defendant Jose Rafor and all persons claiming under him to vacate the premises in question, to remove his two houses and other construction therefrom, and restore possession thereof to plaintiff; by ordering the same defendant to pay to plaintiff the sum of P50.00 per month from the date of usurpation of the same in 1950 until plaintiff is restored to the possession thereof; and by ordering the same defendant to pay the costs. "So ordered."

Dissatisfied, the defendant gave notice that "he appeals to the Supreme Court on questions of law from the decision rendered by the Court".

In his brief, appellant assigns the following errors allegedly committed by the trial court:

"1. The trial court erred in denying the motion for postponement of trial and/or summarily denying the motion to dismiss.

"2. The trial court erred in not dismissing the complaint, or if not, the trial thereof suspended until Civil Case No. Q-4057 is finally determined.

"3. That trial court erred in ordering the defendant to vacate the premises in question and to remove his two houses and other construction from the date of usurpation until plaintiff is restored to the possession thereof."

Considered together, we find no merit in the first two assignments of error. Under Section 1, Rule 8 of the Rules of Court, a motion to dismiss for any of the grounds therein enumerated—pendency of another action is one of them— must be filed "Within the time for pleading", that is, within the time to answer (1 Moran, Comments on the Rules of Court [1952 Ed.] 190). Appellant, in the instant case, filed his motion to dismiss on March 16, 1959, or 25 days after he filed his answer to plaintiff's complaint on February 19, 1959, and on the very eve of the hearing

of the case on the merits set for March 17, 1959. On the other hand, even granting that (a) the parties in the two cases represent the same interest, (b) assert the same rights or pray for the same relief and, (c) the relief is founded on the same facts—three of the requisites of *lis pendens*—still, the fourth requisites, that the judgment to be rendered in the first case, regardless of which party is successful, will amount to *res judicata* against the second action,[1] is not present here. For, if Tuason & Co. wins in the first case, the present action should still proceed to judgment to determine the liability of defendant Refor for his unlawful detention of the property. In the circumstances, the trial court was not in error in denying the motion to dismiss and the petition for postponement predicated on said motion.

Appellant predicates his last assigned error on his allegedly being a builder in good faith. This raises a question of fact which we are not authorized to review. Since appellant has specifically appealed from the decision, of the court a quo questions of law, we are bound by the factual findings therein. Needless to say, there is nothing in said decision to show that appellant is, indeed, a builder in good faith as he claims. Wherefore, finding no error in the judgment appealed from, the same is hereby affirmed in all respects, with costs against the appellant. So ordered.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] *Hongkong & Shanghai Bank vs. Aldecoa & Co.*, 30 Phil. 265, 274-5; *Olayvar vs. Olayvar*, G.R. No. L-8088, Nov. 29, 1955.

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