

GERONIMO AVECILLA, AS ADMINISTRATOR OF THE ESTATE OF DECEASED PLACIDO ALFONSO, PETITIONER, VS. HON. NICASIO YATCO, ET AL., RESPONDENTS.

G.R. No. L-11578. May 14, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On June 11, 1956, Victorino Alfonso, Ciriaca Alfonso and Paciencia Alfonso filed an action in the Court of First Instance of Rizal against Agueda Santos and Santiago Cruz for annulment of certain extra judicial settlement and deed of sale covering a parcel of land allegedly owned by Placido Alfonso, the deceased husband of Agueda Santos. The complaint was later amended so as to include as party defendant Susana Realty, Inc. to which the property was subsequently sold.

On August 1, 1956, Agueda Santos and Santiago Cruz filed their respective answers but Susana Realty, Inc. filed a motion to dismiss alleging (1) lack of cause of action; (2) the cause of action, if any, had prescribed; and (3) plaintiffs do not have legal capacity to sue. On September 1, 1956, by leave of court, plaintiffs were substituted by Geronimo AVECILLA who was appointed judicial administrator of the estate of the deceased Placido Alfonso on June 8, 1956. On September 14, 1956, the court granted the motion to dismiss and dismissed the complaint in so far as Susana Realty, Inc. is concerned. It found that plaintiff has no cause of action against the company, and that if he has any, the action has already prescribed. Plaintiff's motion for reconsideration having been denied, he interposed the present petition for certiorari.

It is alleged in the amended complaint that the spouses Placido Alfonso and Agueda Santos owned a parcel of land covered by Transfer Certificate of Title No. 21913 which was conjugal in nature; that Placido died in 1947 without any issue; that Agueda, alleging fraudulently that she was the sole heir of her deceased husband, executed an extrajudicial deed of settlement and secured Transfer Certificate of Title No. 3585 in her name; that thereafter she sold the land to Santiago Cruz who fraudulently secured Transfer Certificate of Title No. 3586; that Santiago in turn conveyed the property to Susana Realty, Inc. which secured Transfer Certificate of Title No. 31543 in its name; that plaintiffs discovered the fraudulent sale between Agueda and Santiago only in January, 1956, and that between Santiago and Susana Realty, Inc. in June, 1956, Plaintiffs prayed for the annulment of the extrajudicial settlement and the, deeds of sale in favor of Santiago Cruz and Susana Realty, Inc. and for the reconveyance of the property to them.

The first ground on which the lower court dismissed the complaint is that it does not allege a cause of action against Susana Realty, Inc. for the reason that while it alleges that Agueda Santos and Santiago Cruz acted fraudulently in effecting the sale of the land by the former to the latter, there is, however, nothing alleged therein that in the transfer of the land by Cruz to Susana Realty, Inc., the latter acted with knowledge of the fraud or of the defect vitiating the title of Santiago Cruz. It is further inferred from the complaint that the land is covered by a Torrens title on the back of which no encumbrance appears. It is for this reason that the trial court found Susana

Realty, Inc. to have acted in good faith in purchasing the land and held that the action cannot prosper against it under Section 55 of Act 496 which provides: "That in all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title."

We have examined the pertinent allegations contained in the amended complaint and have found the above findings of the trial court correct. Indeed, there is nothing alleged therein which may implicate Susana Realty, Inc. in the commission of the alleged fraud in the transfer made by Agueda Santos of the land to Santiago Cruz although the allegation therein is clear that both Santos and Cruz have acted fraudulently. Being an innocent purchaser for value of the land, its right is protected by law and the remedy of the persons prejudiced is to bring an action for damages against the persons responsible therefor.

"In fact, in view of the issuance of certificates of title, another line of approach conclusive against plaintiffs' side suggests itself; There being no allegation of bad faith against Santos, his purchase of the duly registered title of Afable may not be revoked even if Afable, as alleged in the complaint, obtained it thru fraud. Consequently plaintiffs' action for annulment of the deed of sale will necessarily fail. Plaintiffs' remedy, if any, is an action for damages against Afable by reason of fraud and that remedy may only be demanded judicially within four years after discovery of the deception. (Sec. 43 Act No. 190.)" Raymundo, et al. vs. Afable, et al., 96 Phil., 655.)

The second ground on which the order dismissing the complaint is predicated is that, even if plaintiff has a cause of action against defendant Susana Realty, Inc., the same has already prescribed. The court said: "It is very clear that said prescriptive period commences to run from the discovery of the fraud, which, in the instant case, is from April 11, 1947, the date of registration of the alleged fraudulent document, the affidavit of extra-judicial settlement by the defendant Agueda Santos. It is a well-settled rule in land registration that registration of a document in the registry office operates, not only to the parties to the same, but also against the whole world. It is obvious that the four-year period has long expired from aforesaid date of registration."

Again, we find correct the above finding of the trial court. Under Section 51 of Act 496, every conveyance affecting registered lands if recorded, filed or entered in the office of the register of deeds, shall "be notice to all persons from the time of such registration, filing, or entering." And it has been held that the period of prescription in relation to an action to annul a sale of land bought by third persons should be counted from the date of registration of the same, which is notice to the whole world (*De Guinoo vs. The Court of Appeals*, 97 Phil., 235).

But petitioner maintains that this cause of action has not yet prescribed because when Agueda Santos, through fraudulent misrepresentation, secured a certificate of title in her name, a constructive trust in favor of the defrauded heirs of her late husband was created which grants to said heirs the right to vindicate the property regardless of the lapse of time. But the right of action in this constructive trust should be exercised against the trustee, who caused the fraud, and not against an innocent purchaser for value, as the Susana Realty, Inc. This right may also be exercised against Santiago Cruz who also obtained title to the land with knowledge of the fraud, but not with regard to Susana Realty, Inc. which, as already stated, has bought the property in good faith. The remedy in this case of the defrauded heirs is to bring an action for damages against those who caused the fraud or were instrumental in depriving them of the property. Their action cannot reach an innocent purchaser for value who is protected by law (*Raymundo, et al. vs. Afable, et al.*, *supra*).

After plaintiffs have filed their amended complaint in the lower court and defendant Susana Realty, Inc. filed its motion to dismiss alleging that the same alleges no cause of action against it because it appears therein that it has acted without knowledge of the fraud with which the title of its predecessor-in-interest was vitiated, counsel for plaintiffs moved for leave to file their amended complaint in order that he may supply the deficiency in so far as

said defendant is concerned. Of course, defendant Susana Realty, Inc. opposed the move and the court denied the motion. Counsel now contends that the lower court erred in denying the motion.

While under the rules a party may, upon motion, ask the court for leave to alter or amend any pleading, action thereon is addressed to the discretion of the court. The court may grant leave to amend upon such terms as may be just or where in its opinion the circumstances so warrant (section 2, Rule 17). The rule is not mandatory. The rule is further subject to the limitation that, if the amendment is allowed, the cause of action should not be substantially changed, or the theory of the case altered to the prejudice of the other party. Thus, it was held: "The granting of leave to file amended pleadings is a matter peculiarly within the sound discretion of the trial court. This discretion will not be disturbed on appeal, except in case of an evident abuse thereof. But the rule allowing amendments to pleadings is subject to the general but not inflexible limitation that the cause of action or defense shall not be substantially changed, or that the theory of the case shall not be altered" (Torres Vda. de Neir vs. Tomacruz, 49 Phil, 913). In the circumstances, we find nothing to show that the lower court has abused its discretion on this matter.

We find one procedural error committed by petitioner in this case. Petitioner seeks redress from an order of the trial court dismissing his complaint against the Susana Realty, Inc. but in doing so he filed a petition for certiorari. This is erroneous for his remedy is appeal, the order in question being final in character. This alone is enough ground for the dismissal of the present petition for certiorari.

Petition is dismissed, with costs against petitioner.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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