

MELCHOR ALCANTARA, PLAINTIFF-APPELLEE, VS. SEVERINO BONEO, FELICISIMA BONEO AND JESUS MEJIS, DEFENDANTS-APPELLANTS.

G.R. No. L-39828. October 05, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This case was certified to Us by the Court of Appeals pursuant to Section 17(4) of Republic Act No. 296 since it involves only questions of law.

The pertinent facts, as culled from the pleadings, are as follows:

On March 4, 1970, plaintiff-appellee Melchor Alcantara filed a complaint before the Court of First Instance (now Regional Trial Court) of Quezon, Ninth Judicial District, Calauag Branch, for recovery of possession with damages against defendants-appellants Severino Boneo, Felicisima T. Boneo, and Jesus Mejis. He alleged therein the following: that he is the registered owner of a parcel of agricultural land situated in the barrio of Cadlit, Buenavista, Quezon covered by Transfer Certificate of Title No. T-56897; that he had been in continuous, peaceful, adverse physical possession thereof, enjoying its fruits, from April 12, 1964 until February, 1966 when spouses Boneo occupied a portion of said land with an area of approximately four (4) hectares, and later placed Jesus Mejis as tenant thereon; that his predecessors-in-interest had been in peaceful, adverse, and continuous possession thereof, in the concept of owners, since time immemorial until April 12, 1964, when they sold the land to him; and that defendants-appellants are unlawfully withholding the possession of the land since February, 1966 up to the present (pp. 19-22, Rollo).

In their answer dated March 20, 1970, defendants-appellants asserted the following: that they are the owners of a parcel of land in the same barrio of Cadlit, Buenavista, Quezon, covered by Original Certificate of Title No. 6870; that they have been in open, peaceful, public, continuous and adverse possession thereof since 1924 when they filed Homestead Application No. 106209 (E-66647); and that they have been paying taxes thereon from the time a homestead patent was issued to them up to the present (pp. 22-26, Rollo).

In the hearing held on August 4, 1970, the counsel of both parties stated that "in order to abbreviate the proceedings to save time and efforts of the Court and the parties, it would seem to be better part of prudence that the property be relocated" (p. 28, Rollo). Consequently, Geodetic Engineer Pedro L. Barras was appointed by the trial court to conduct the relocation survey and thereafter, to submit a plan with the corresponding technical descriptions as well as his reports.

On February 11, 1971, in order to expedite the resolution of differences among the parties, the trial court ordered their counsel to submit pre-trial memoranda with copies of documents in their possession (pp. 29-30, Rollo). On February 22, 1971, considering the manifestation of the counsel of plaintiff-appellee that a pre-trial can be dispensed with on the ground that the only legal issue involved is, which of the title of the parties over the questioned land shall prevail, and that a plan and a commissioner's report have already been submitted, the trial

court agreed to the suggestion of said counsel to submit the case for summary judgment and thus instructed both counsel to submit their memoranda simultaneously not later than March 15, 1971 attaching therewith certified copies of documentary evidence in their possession after which, the case shall be deemed submitted for decision based on the pleadings (pp. 30-31, Rollo). Acting on the ex-parte motion to render judgment filed by the counsel of plaintiff-appellee, it appearing that defendants-appellants have not filed their memorandum within the period, the case was submitted for decision on March 30, 1971 (p. 31, Rollo).

On April 11, 1971, defendants-appellants filed a petition for reconsideration of the March 30, 1971 order (pp. 32-37, Rollo), which was opposed by plaintiff-appellee (pp. 37-39, Rollo). On April 21, 1971, the trial court, in resolving the petition for reconsideration and the opposition thereto, directed defendants-appellants to submit their memorandum and documentary evidence within twenty (20) days upon receipt of the copy of the order; and if the same may enable the trial court to render judgment, the case shall be ordered submitted for decision, otherwise, it will direct the presentation of parol evidence (pp. 39- 40, Rollo). On May 26, 1971, defendants-appellants filed their pre-trial memorandum (pp. 40-41, Rollo).

On September 13, 1971, the trial court rendered judgment in favor of plaintiff-appellee, the dispositive portion of which reads (p. 50, Rollo):

"WHEREFORE, premises considered, judgment is hereby rendered declaring plaintiff MELCHOR ALCANTARA as the sole and absolute owner of the whole property covered by T.C.T. No. T-56897, entitled to the full possession and enjoyment thereof; ordering defendants Severino Boneo, Felicisima T. Boneo and Jesus Mejis to vacate the four (4) hectares portion of the land covered by the above title and immediately restore the possession thereof to plaintiff, with costs against defendants.

"SO ORDERED."

The petition for reconsideration filed by defendants-appellants was denied for lack of merit on March 13, 1972 (pp. 76-82, Rollo).

On March 18, 1972, defendants-appellants filed an appeal to the Court of Appeals (pp. 82-83, Rollo). On October 28, 1974, the appellate court resolved to certify the case to this Court.

The assignment of errors made by defendants-appellants may be limited to the following:

- 1) the trial court erred in granting a motion for summary judgment which was not in accordance with Sections 1, 2 and 3 of Rule 34; and
- 2) the trial court erred in rendering a summary judgment in spite of the fact that all the issues are controverted.

In their brief, defendants-appellants contend that the motion for summary judgment was not supported by affidavits (as required by Sections 1 and 2 of Rule 34), depositions or admissions (as enunciated in *Motor Service Co., Inc. v. Yellow Taxicab Co., Inc., et al.*, G.R. No. L-7063, March 29, 1955, 51 O.G. 1849). It was verbal, not under oath or based on matters deemed admitted. The motion was interposed only during a scheduled pre-trial and in the absence of the counsel of defendants-appellants. Additionally, a perusal of their (defendants-appellants) answer show that only the personal circumstances of plaintiff-appellee were admitted by them. All other allegations in the complaint were specifically denied and affirmative defenses were alleged by them which raised issues that could be resolved only in a trial (pp. 101-116, Rollo).

On the other hand, plaintiff-appellee avers in his brief that defendants-appellants are deemed to have assented to the rendition of summary judgment for their failure to raise any objections to the February 22, 1971 and April 21, 1971 orders of the trial court. The trial court, as can be gleaned from the details of the decision and the order

denying the motion for reconsideration, took considerable pains in evaluating the facts on which it based its judgment thereby indicating that it was the product of serious deliberation. Furthermore, defendants-appellants did not specifically deny in their answer the material allegations of the complaint but merely pleaded ignorance thereof (p. 126, Rollo).

The appeal lacks merit. We shall dispose of the first assignment of error by quoting the relevant portions of the trial court's order dated March 13, 1972, to wit (pp. 78-80, Rollo):

"x x x. Without necessarily judging, indulging to prolixity (sic), the Court desires to trace how the present case was deemed submitted for decision, from the first time it was set for pre-trial on April 14, 1970 which was prayed postponed by defendants' counsel, as well as the subsequent hearing on September 22, 1970, November 16, 1970, January 19 and February 22, 1971 which were also ordered reset upon his own behest, not to mention that instance when he just failed to come with no notice to the Court at all. On February 22, 1971, plaintiff's counsel, while he did not object to another postponement by counsel for defendants, prayed that the case be deemed submitted for summary judgment pursuant to Rule 30 (sic) of the New Rules of Court, on the manifestation that the only legal issue involved is, which of the title of the adverse parties over the disputed portion shall prevail. The Court found said suggestion meritorious considering that a plan and commissioner's report have already been submitted pursuant to an Order on August 8, 1970 (sic) ordering the relocation of the litigated property so that both counsel were thereafter instructed to submit their memoranda simultaneously attaching therewith certified copies of their documentary evidence, after which the case shall be deemed submitted for decision. As borne out by the records, the aforesaid order (dated February 22, 1971) was received by defendants' counsel on February 26, 1971 who, by his failure to move for its reconsideration is deemed to have raised no objection thereto. Consequently, upon ex-parte motion to render judgment, the case was finally deemed submitted for decision on March 30, 1971. Defendants' counsel moved to reconsider the aforesaid order by the Court from an examination of the arguments of both parties (sic) noted that plaintiff condescended to the desire of defendants that, after the filing of the parties (sic) memoranda and the Court finds (sic) the same insufficient to render judgment, parol evidence should be admitted so that defendants on April 21, 1971 were directed to submit their memoranda and documentary evidence, which is sufficient (sic), the case shall be ordered submitted for decision otherwise the Court will submit (sic) the presentation of oral evidence. Apparently, defendants' counsel acquiesced (sic) to said Order, raised no further opposition thereto and in compliance with (sic) filed his pre-trial memorandum on May 26, 1971 alleging only the following facts, to wit:

'They are the owners in fee simple of the property covered by, and described in, Original Certificate of Title No. 6870 of the Registry of Deeds of Quezon Province; the property was surveyed for them and in their name as far back as May 10-11, 1939; they have been in the open, peaceful, public, adverse and continuous possession of their property as far back as 1924 and up to the present date; they introduced permanent improvements thereon worth thousands of pesos; and they have been religiously paying taxes thereon for a period of more than thirty (30) years now.

'2. That plaintiff knows the defendants have occupied and possessed in good faith the property in litigation and they introduced permanent improvements on the said property worth not less than P30,000.00 in 1963 and may now be valued triple or quadruple that amount.

'City of Lucena, May 26, 1971.

Respectfully submitted:

PARENTELA & PARENTELA**BY:****JOSE P. PARENTELA**

Attorney For The Defendants

City of Lucena'

without however substantiating it with documentary proofs, x x x." (underscoring supplied)

Verily, since defendants-appellants failed to object at the opportune time or move for the reconsideration of the February 22, 1971 and April 21, 1971 orders, they cannot now be allowed to question said orders. Estoppel has set in. Their allegation that they filed a one (1) page memorandum only without any documentary evidence, in order not to have a summary judgment, is a virtual admission of ignorance of the rules on summary judgment.

Neither are We in conformity with the view of defendants-appellants that all the issues before the trial court were controverted. Where the motion for summary judgment is made by a claimant (plaintiff), the defendant must show that he has a plausible ground of defense, something fairly arguable and of a substantial character (3 Moore's Federal Practice, pp. 3184, 3185 cited in The Revised Rules of Court by Vicente J. Francisco, Vol. II, p. 421). In this case, an examination of the pleadings and the documents on file show the non-existence of defendants-appellants' claims and defenses. There is no genuine issue as to any material fact. Under the circumstances, the trial court committed no error in rendering a summary judgment on the merits of the case (see De Leon v. Faustino, 110 Phil. 249). As the trial court said in its decision dated September 13, 1971:

"Unfortunately, other than defendants' averment of ownership in fee simple of the property covered by and described in OCT No. 6870 of the Registry of Deeds of Quezon, they did not bother to substantiate it with concrete evidence, thus rendering their defense open to discredit. x x x. (p. 47, Rollo)

"x x x.

"The plaintiff meticulously traced his right to the property from the original registered owner to his immediate predecessor-in-interest Jovencio Capal (Annex 'C,') 'D,' 'E,' and 'F') and also submitted the tax receipts evidencing religious payment of the land taxes thereof (Annex I to G) inclusive. All these, taken in conjunction with the other documentary exhibits heretofore discussed, is evidenced against defendants of a nature, more than merely preponderant." (p. 50, Rollo)

ACCORDINGLY, the appeal is hereby DENIED. The decision of the Court of First Instance of Quezon dated September 13, 1971 and its order dated March 13, 1972 are AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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