

GERVACIO LUIS QUE, PETITIONER, VS. COURT OF FIRST INSTANCE OF RIZAL, BRANCH IX, QUEZON CITY, LINO DIZON, GREGORIO DIZON, LUZ MOJARES DIZON, EMILIA DIZON SEGISMUNDO, REMEDIOS DIZ...

G.R. No. L-33192. October 23, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

Appeal from the Order dated July 1, 1969 issued by the Court of First Instance of Rizal, Branch IX, Quezon City, Judge Lourdes P. San Diego, presiding, in Civil Case No. Q-12845 entitled "Gervacio Luis Que, Plaintiff, versus Lino Dizon, et al., Defendants" for Declaration of Nullity and/or Rescission of Contract, dismissing the complaint filed therein on a motion to dismiss based on the ground that the complaint states no cause of action. Petitioner also appeals from the order dated December 16, 1969 issued by the same Judge denying the motion for reconsideration.

It appears from the records that on February 18, 1969, petitioner filed the complaint with application for writ of preliminary attachment in Civil Case No. 12845 alleging, among others, the following material and relevant allegations:

"4. That on June 10, 1961, plaintiff herein brought an action against the now deceased Maria Villanueva Dizon and defendant Lino Dizon in the Court of First Instance of Manila, docketed as Civil Case No. 47265, for the purpose of compelling the said Maria Villanueva Dizon to surrender Transfer Certificate of Title No. 20799 or any other Transfer Certificate of Title issued in lieu thereof to the plaintiff so that the latter may effect the segregation of two (2) hectares of land which the late Maria Villanueva Dizon, with the marital consent of defendant Lino Dizon, sold to the plaintiff on September 30, 1944, as shown by the Deed of Absolute Sale executed by the spouses Lino Dizon and Maria Villanueva Dizon in favor of the plaintiff. A true copy of said Deed of Absolute Sale is hereto attached, marked as Annex "A", and made integral part hereof;

5. That without the knowledge of the plaintiff, a new Transfer Certificate of Title No. 8848 of the Registry of Deeds for Quezon City was subsequently issued solely in the names of the late Maria Villanueva Dizon and defendant Lino Dizon for that parcel of land originally embraced in Transfer Certificate of Title No. 20799 of the Registry of Rizal, including the unsegregated two (2) hectares thereof pertaining to the plaintiff;

6. That on June 22, 1961, while the said Civil Case No. 47265 of the Court of First Instance of Manila was pending, the spouses, defendant Lino Dizon and the now deceased Maria Villanueva Dizon surreptitiously, fraudulently, and without the knowledge and consent of the plaintiff, mortgaged to the Philippine National Bank several parcels of lands, including plaintiff's unsegregated two (2) hectares of land embraced in the new Transfer Certificate of Title No. 8848 of the Registry of Deeds for Quezon City, to secure a loan of P360,000.00, more or less;

7. That thereafter, the action commenced by the plaintiff in the Court of First Instance of Manila, docketed as Civil Case No. 47265, was dismissed on the ground of improper venue;

8. That on May 23, 1962, plaintiff filed another complaint in the Court of First Instance of Rizal, against defendant Lino Dizon and the now deceased Maria Villanueva Dizon, which was docketed as Civil Case No. 7143, for the same purpose as in the case of the first complaint originally filed in the Court of First Instance of Manila. A true copy of the Complaint filed in the Court of First Instance of Rizal is hereto attached as Annex "B", and made integral part hereof;

9. That on August 11, 1965, the defendants, with full knowledge of the pendency of Civil Case No. 7143 of the Court of First Instance of Rizal, executed a Deed of Absolute Sale whereby all or nearly all of the properties of the spouses Maria Villanueva Dizon and defendant Lino Dizon were transferred to defendants herein. A true copy of said Deed of Absolute Sale is hereto attached, marked as Annex "C", and made an integral part hereof;

10. That by virtue of the said Deed of Absolute Sale (Annex "C"), Transfer Certificate of Title No. 8848 of the Registry of Deeds of Quezon City was cancelled, and in lieu thereof Transfer Certificate of Title No. 107110, Book No. 539, Page 110 of the Register of Deeds for Quezon City was issued in the names of defendant Gregorio Dizon, married to Luz Mojares, Emilia Dizon, married to Jose R. Segismundo, Remedios Dizon Perez, married to Amador Perez, Rosenda Dizon, and Lilia Quitangon, married to Augusto Quitangon. A xerox copy of said Transfer Certificate of Title No. 107110 is hereto attached as Annex "D", and made integral part hereof;

11. That the said Deed of Absolute Sale (Annex "C") also included plaintiff's unsegregated two (2) hectares of land embraced in Transfer Certificate of Title No. 8848 of the Registry of Deeds of Quezon City, which were then the subject of Civil Case No. 7143 of the Court of First Instance of Rizal;

12. That less than a month after the execution of the said Deed of Absolute Sale (Annex "C"), Maria Villanueva Dizon, one of the parties thereto, died;

13. That on July 7, 1966, or almost eleven (11) Months from its date of execution, the said Deed of Absolute Sale was finally registered in the Office of the Registry of Deeds for Quezon City;

14. That on October 21, 1966, or about two and one-half (2-1/2) months from date of registration of said Deed of Absolute Sale, a decision was rendered in said Civil Case No. 7143 of the Court of First Instance of Rizal in favor of the plaintiff. A true copy of said decision is hereto attached as Annex "D", and made integral part hereof;

15. That the said Deed of Absolute Sale is absolutely simulated and/or fictitious, and entered into by defendants and the late Maria Villanueva Dizon, for the purpose of evading the payment of estate and inheritance taxes;

16. That even if plaintiff fails to prove that the said Deed of Absolute Sale (Annex "C") is absolutely simulated and/or fictitious, the same is still void and/or recissible;

17. That the said Deed of Absolute Sale (Annex "C") is exclusively between parents and children, the deceased Maria Villanueva Dizon and defendant Lino Dizon, on the one hand, and defendants Gregorio Dizon, Emilia Dizon Segismundo, Remedios Dizon Perez, Rosenda Dizon, Felicidad Dizon Noble, and Lilia Dizon Quitangon, on the other hand;

18. That the consideration of the alleged Deed of Absolute Sale, if there be any, is grossly inadequate compared to the real value of all the properties fraudulently transferred to the defendants;

19. That the alleged Deed of Absolute Sale (Annex "C") was undertaken in fraud of creditors, and in contemplation of the impending death of the late Maria Villanueva Dizon;

20. That the reasonable value of plaintiff's property fraudulently included in the alleged Deed of Absolute Sale (Annex "C") is reasonably estimated to be P80.00 per square meter, more or less;

21. That in order to place beyond the reach of herein plaintiff the latter's two (2) hectares of land fraudulently included in the alleged Deed of Absolute Sale, defendants have increased the original obligation secured by the real estate mortgage constituted over the property embraced in Transfer Certificate of Title No. 107110 of the Registry of Deeds of Quezon City;

22. That due to the fraudulent transfer of all or substantially all of the properties (including plaintiff's unsegregated two (2) hectares of land) of defendant Lino Dizon and the now deceased Maria Villanueva Dizon to the other defendants, under the guise of a supposed Deed of Absolute Sale, said Decision (Annex "D"), can-not be executed notwithstanding the Order of Special Execution issued in said Civil Case No. 7143 of the Court of First Instance of Rizal.

x x x."

In the Prayer, "plaintiff respectfully prays that:

1. Pending litigation, a writ of preliminary attachment be immediately issued against the properties of defendants as security for whatever judgment that might be recovered by the plaintiff against the defendants;

2. After due hearing, judgment be rendered:

(a) Declaring the nullity or, or annulling the Deed of Absolute Sale (Annex "C");

(b) Ordering defendants jointly and severally to effect the release of the mortgage lien and other encumbrances on the two (2) hectares of land presently embraced in TCT No. 107110 of the Register of Deeds of Quezon City, and to execute the necessary conveyance thereof in favor of the plaintiff within one (1) month from finality of judgment; and if defendants should fail to effect the release of the existing lien thereon, and to execute the necessary conveyance thereof to the plaintiff, within the period allowed by this Honorable Court, the same be ordered done at the expense of the defendants, by ordering the proper court officer to sell so much of defendants' properties as may be necessary for that purpose;

(c) In the alternative, if it is not possible in any manner to effect the release of the existing liens over the two (2) hectares of land embraced in Transfer Certificate of Title No. 107110 of the Registry of Deeds for Quezon City, and to make the necessary conveyance thereof to the plaintiff, defendants be ordered jointly and severally to pay to the plaintiff the fair market value of said two (2) hectares of land prevailing at the time judgment has become final and executory;

(d) Ordering defendants jointly and solidarily to pay to the plaintiff the following:

(i) Such amount as may be reasonably assessed by this Honorable Court as and by way of moral damages;

(ii) Such amount as may be reasonably determined by this Honorable Court as and for exemplary or corrective damages;

(iii) The amount equivalent to 35% of the two (2) hectares of land embraced in TCT No. 107110 of the Registry of Deeds for Quezon City, as and for attorney's fees; plus

(iv) The costs of the suit.

PLAINTIFF further prays for such other remedy as may be just and equitable in the premises.

Manila, Philippines, February 7, 1969."

On March 14, 1969, defendants therein with the exception of the spouses Jose R. Segismundo and Emilia Dizon Segismundo and Rosenda Dizon filed Motion to Dis-miss Complaint on the ground "that the complaint states no cause of action." (Section 1(g), Rule 16, Rules of Court). The argument of the defendants, now the private

respondents herein, in support of the Motion to Dismiss stresses that:

"The action alleged in the complaint filed by the plaintiff in the above-entitled case is based primarily on the annulment of the Deed of Absolute Sale (Annex "C") of Lot 937-8-2 of the subdi-vision plan Psd-22014, GLRO Rec. No. __, situated in Quezon City, now covered by T.C.T. No. 107110 of the Registry of Deeds for Quezon City, executed by spouses Lino Dizon (herein defendant) and Maria Villanueva Dizon (now deceased) on August 11, 1965 in favor of the other defendants in this case. In filing the said action, plaintiff has anchored his right on a "Deed of Absolute Sale" (Annex "A") said to have been executed by Maria Villanueva Dizon (now deceased), with the conformity of herein defendant Lino Dizon, on September 30, 1944 of a parcel of land (Lot 937 of the subdivision plan Psd-2118, Piedad Estate, GLRO Record No. 6975) and covered by T.C.T. No. 20799 in the Re-gistry of Deeds for the Province of Rizal.

Plaintiff, in his complaint filed in the above-entitled case, has alleged that on May 23, 1962 he filed an action in the Court of First Instance of Rizal, which was docketed as Civil Case No. 7143, entitled: Gervacio Luis Que, vs. Lino Dizon and Maria Villanueva Dizon for the segregation of 1/2 of the land said to be purchased by the plaintiff from said defendant (as appearing in Annex "A") and to surrender its title to plaintiff; that in the said case, the said defendants asserted that the transaction between them and the plaintiff was not sale but a loan, which has been paid and that the action has already prescribed; that the plaintiff therein won in the said court of first instance but the decision was appealed to the Court of Appeals; that the appeal was dismissed by the Court of Appeals for failure of the defendants (appellants) to show the data that the appeal was made on time (Sec. 6, Rule 41 of the Rules of Court; but the defendants filed a petition for certiorari with the Supreme Court to review the said dismissal; and that the said petition has been given due course and is now pending before the Honorable Supreme Court. It is, therefore, respect-fully submitted that the question presented before the Court of First Instance of Rizal in Civil Case No. 7143 - wherein the issue joined is whether the deed (Annex "A"), upon which the herein plaintiff claims his right over the afore-described parcel of land is a sale or a loan, is not yet untimely decided because of the pendency of the petition before the Honorable Supreme Court, which is fully known by plaintiff.

There is a cause of action, according to our jurisprudence, when the legal right of the plaintiff has been violated by the act or omission of the defendant.

In the case at bar, the legal right which the plaintiff asserts over the above-stated parcel of land, has not been ultimately decided because of the pendency of the petition for certiorari with the Supreme Court by the herein defendants Lino Dizon and the heirs of Maria Villanueva Dizon. It can therefore be said that the alleged legal right of the plaintiff over the pro-perty in question has not yet been ultimately decided, so the action brought in the case at bar is still premature. An action prematurely commenced should be dismissed. x x x"

We quote hereunder the Order of Judge Lourdes P. San Diego dated July 1, 1969, subject of the present appeal:

" O R D E R

This is an action wherein the plaintiff seeks, pending the litigation of this case, a writ of preliminary attachment; to declare the Deed of Absolute Sale (Annex "C") of the complaint) null and void; to release the mortgage lien and other encumbrances on the two (2) hectares of land annotated in TCT No. 107110 of the Register of Deeds of Quezon City; and in the alternative to pay the plaintiff moral and exemplary or corrective damages, and the amount equivalent to 35% of the two (2) hectares of land against defendants for allegedly having simulated and fictitiously transferred the property subject of this litigation by virtue of an Absolute Deed of Sale. The same action is the subject of the motion to dismiss filed by the defendants Lino Dizon, Gregorio Dizon, Luz Mojares Dizon, Remedios Dizon Perez, Felicidad Dizon Noble, Manuel Noble, Lilia Dizon Quitangon and Augusto Quitangon. After plaintiff had filed his opposition and above-named de-fendants had replied thereto, the incident were submitted for resolution.

In their motion to dismiss the defendants advance the ground that the plaintiff's complaint states no cause of action.

The movants claim that the plaintiff's cause of action was based on the annulment of the Deed of Absolute Sale (Annex "C" of the Complaint), executed by spouses Lino Dizon (defendant herein) and Maria Villanueva-Dizon (now deceased) on August 11, 1965 in favor of the other defendants in this present case, that the plaintiff on May 23, 1962 filed an action in the Court of First Instance of Rizal entitled: Gervacio Luis Que vs. Lino Dizon and Maria Villanueva Dizon for the segregation of one half of the land which plaintiff purchased from defendant Maria Villanueva Dizon and to surrender its title to plaintiff; that said Court rendered decision in favor of the plaintiff and against the defendants; that the defendants appealed the decision to the Court of Appeals but the same was dismissed on the ground that the defendants failed to show that the appeal was made on time; that the defendant filed a petition for certiorari with the Supreme Court to review the dismissal of the appeal; and that plaintiff's legal rights over the property subject of this action has not been ultimately decided due to the pendency of the petition for certiorari with the Supreme Court, therefore, the action brought in the present case is premature.

x x x

It appears from the motion to dismiss not contradicted by the plaintiff that there is a cause pending in the Supreme Court between the same parties for segregation of one half of the land the very title of which is sought to be declared null and void in the present suit. To entertain this suit at this time when the Supreme Court has as yet not rendered any judgment on the litigation before it would be most improper on the part of this Court.

WHEREFORE, this case is hereby dismissed without pronouncement as to costs."

We hold that the dismissal of the complaint in the Order quoted above is proper and correct, the same being in accordance with law and jurisprudence.

The rule is well-established that in considering a motion to dismiss the complaint on the ground that it states no cause of action, the insufficiency must appear on the face of the complaint. Only the facts alleged in the complaint and no other should be considered. The motion to dismiss must admit hypothetically the truth of the facts alleged in the complaint, and the test of the sufficiency of the facts alleged in a complaint, to constitute a cause of action, is whether or not, admitting the facts alleged, the court could render a valid judgment in accordance with the prayer of said complaint.

From the allegations of the complaint filed in C.C. Q-12845 and now under review, We find that the decision in C.C. No. 7143 dated October 21, 1966 referred to in paragraph 14 of said complaint, had not become final and executory. This can be inferred from the allegation in paragraph 22 thereof that "said decision (Annex "D") cannot be executed notwithstanding the Order of Special Execution issued in said Civil Case No. 7143 of the Court of First Instance of Rizal."

The right of the plaintiff, now the petitioner, to the two (2) hectare land having been questioned by the defendants Dizon spouses in C.C. 7143 who claim that the transaction between them was a loan and not a sale and that the loan had already been paid, the appeal interposed by the Dizon spouses to the Court of Appeals and ultimately to the Supreme Court in certiorari proceedings had not resolve finally the right of the petitioner to the land in question. In other words, the filing of the complaint in Civil Case No. Q-12845 was premature. The action presented by petitioner in his complaint below is groundless and should be dismissed, there being no final and conclusive judicial pronouncement that the legal right of the petitioner had been violated by the act or omission of the private respondents.

"It is a rule of law to which there is, perhaps, no exception, either at law or in equity, that to recover at all there

must be some cause of action at the commencement of the suit. As observed by counsel for appellees, there are reasons of public policy why there should be no needless haste in bringing up litigation, and why people who are in no default and against whom there is as yet no cause of action should not be summoned before the public tribunals to answer complaints which are groundless. We say groundless because if the action is immature, it should not be entertained, and an action prematurely brought is a groundless suit." (Justice Laurel in *Surigao Mine Exploration Co. vs. C. Harris, et al.*, 68 Phil. 113, 120-121).

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the dismissal of the complaint in Civil Case No. Q-12845 as ordered by respondent Court in its Orders of July 1, 1969 and December 16, 1969 is hereby AFFIRMED. No costs.

Petition denied.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur.
Aquino, J., no part.

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