

ADOLFO GASPAR, PLAINTIFF AND APPELLEE, VS. LEOPOLDO DORADO, ET AL., DEFENDANTS, C. N. HODGES, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-17884. November 29, 1965*

Ponente: MAKALINTAL, J.

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This is an appeal from the decision of the Court of First Instance of Capiz, Honorable Cesario Golez presiding, taken by defendants C.N. Hodges and Visayan Surety and Insurance Corporation to the Court of Appeals and subsequently certified to this Court in view of the question of jurisdiction raised by appellants in their brief.

One Vicente Alamodin was the owner of an undivided half portion of a residential lot with an area of 391 square meters, situated in the district of tanque, City of Roxas. The lot is identified as No. 170-H of subdivision plan Psu-39949, covered by Transfer Certificate of Title T-1942 of the land registry of Capiz. On January 4, 1956, Alamodin sold his aforesaid portion to plaintiff-appellee Adolfo Gaspar. The sale was inscribed in the land registry and annotated on the certificate of title on February 15, 1956.

Meantime, since November 1955, there was pending against Alamodin and two other persons, Jose Casugfoo and Conrado Alegre, a complaint in the Municipal Court of the City of Iloilo, filed by herein appellant C. N. Hodges for collection of a sum of money. Judgment was rendered in that case in favor of Hodges on February 27, 1956, pursuant to which execution was ordered by the Municipal Court on August 3, 1956. In the public sale conducted on the following October 17 the Provincial Sheriff of Capiz, Leopoldo Dorado, sold the undivided half portion of lot No. 170-H, then still covered by the title in Alamodin's name, to C. N. Hodges for the sum of P2,614.53. The Sheriff's certificate of sale was executed on October 29, 1956, followed by a definite deed on January 9, 1959, both in Hodges' favor.

After the land was levied upon on execution Adolfo Gaspar filed a third-party claim with the Provincial Sheriff on October 8, 1956. However, Hodges put up an indemnity bond subscribed by the Visayan Surety & Insurance Co., by reason of which the Sheriff proceeded with the auction sale aforementioned.

On February 14, 1957 plaintiff commenced the present action. In his original complaint he alleged, among other things, that he had acquired ownership of the land in question by virtue of the prior sale to him and its registration in the land registry of Capiz and that when judgment was rendered by the Municipal Court of Iloilo City in favor of Hodges and against Alamodin the latter was no longer the owner. Having thus claimed exclusive ownership, plaintiff merely prayed for damages in his original complaint, to wit: P100.00 for expenses; P300.00 for attorney's fees, and P1,000.00 as moral damages. After defendants filed their answer, but before trial was commenced, plaintiff was permitted by the Court a quo, over defendants' objection, to file an amended complaint wherein he expressly prayed for annulment of the sale in favor of Hodges. In the judgment rendered by said Court on February 25, 1959 it did not award damages but declared the prior sale to plaintiff as valid and the one executed by the Sheriff in favor of Hodges as null and void.

The first point raised here by appellants, which was likewise raised below in their opposition to the admission of the amended complaint, is that the Court of First Instance of Capiz did not acquire jurisdiction over the case under the allegation of the original complaint because the cause of action therein was for recovery of damages in the aggregate sum of less than P2,000.00 and therefore was not cognizable by said Court but by the corresponding Justice of the Peace Court or Municipal Court; and that lacking jurisdiction in the first place the Court of First Instance erred "in allowing another complaint which prays for the annulment of the sale."

To be sure, there is authority for the proposition that when it appears from the very face of the complaint that the Court has no jurisdiction over the subject-matter of the case amendment of the complaint could not be allowed so as to confer jurisdiction upon the court, since the court must first acquire jurisdiction over the case in order to act validly therein. *Rosario vs. Carandang*, 96 Phil. 845.

Explaining the principle in another way, this Court has ruled that whenever possible the amendment of a defective pleading should be allowed, but that when it is evident that the court has no jurisdiction over the person and the subject-matter, that the pleading is so fatally defective as not to be susceptible of amendment, or that to permit such amendment would radically alter the theory and the nature of the action, then the court may refuse the amendment of the defective pleading and order the dismissal of the case. *Praxedes Alvarez vs. The Comm. of the Phil.* 65 Phil. 302. The rule is always in favor of liberality in construction so that the real matter in dispute may be submitted to the judgment of the Court. Imperfections of form and technicalities of procedure should be disregarded unless substantial rights would otherwise be prejudiced. In testing the sufficiency of a complaint neither its caption nor its prayer is decisive. The allegations as a whole must be considered. Applying this test in the instant case we find that in his original complaint plaintiff put in issue the validity of the sheriff's sale in favor of defendant Hodges and claimed exclusive and absolute ownership of the property in question by virtue of the prior sale in his favor and of its registration in the land registry of Capiz. The resolution of this question, on which plaintiff's prayer for damages was predicated and without which no decision could be rendered, was within the jurisdiction of the Court of the First Instance of Capiz. The amendment of the complaint, therefore, was merely a matter of form and not of substance, and the Court a quo committed no error in allowing it.

The second point raised by appellants refers to the effect of the prior sale to appellee vis-a-vis the subsequent sheriff's sale. Appellants seek to have said prior sale set aside on the ground that it was executed in fraud of Hodges, upon the presumption set forth in Article 1387 of the Civil Code. This provision says that alienations by onerous title are presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued, although the decision or attachment does not refer to the property litigated. It is at once obvious that the presumption does not apply in this case, because the judgment obtained by Hodges against Vicente Alamodin, owner of the land in dispute, was rendered after the sale of the same land to appellee. Nor was a writ of attachment ever issued.

It is true Article 1387 also provides that in addition to the presumptions therein stated the design to defraud creditors may be proved in any other manner recognized by the law of evidence. Reliance is placed by appellants on the case of *Oria vs. McMicking*, 21 Phil. 243, in which this Court enumerated seven circumstances all present therein which constitute badges of fraud. Of those seven, however, only one is present here, namely, that the transfer of the property by Alamodin to appellee was made after suit had been begun by Hodges against the transferor for collection of an indebtedness. This lone circumstance, by itself alone, is not sufficient to prove fraud and indeed, in the light of the other facts found by the trial Court, appears to be purely casual and fortuitous. There is no showing that the appellee knew of the pending action against Alamodin when he bought the land. That action was before the Municipal Court of Iloilo, while the land is in Roxas City, where appellee was residing. And the latter had a special and valid interest in acquiring the land for himself because his house was built partly on it

and partly on the adjoining lot (No. 170-J), which was owned by him. It was a transaction which the parties did not attempt to conceal, for it was duly recorded in the land registry of Capiiz. There is neither presumption nor evidence of fraud in connection with the sale to appellee; on the contrary, the evidence proves that it was regular and in good faith. And it having been registered prior to the levy on execution in favor of Hodges, the sheriff's sale to the latter was correctly set aside.

The judgment appealed from is affirmed, with costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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