

NICANOR PADILLA, PLAINTIFF AND APPELLEE, VS. ANDRES DE JESUS, PABLO DE JESUS, JOSEFA DE JESUS, DOROTEO CELIS, JR., NATIVIDAD DE JESUS, ROMEO MORALES AND MANUEL DE JESUS, DEFENDA...

G.R. No. L-6008. August 31, 1954

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On August 24, 1950, plaintiff filed an action for ejectment in the Municipal Court of Manila against defendants to recover the possession of a parcel of land located at Paco, Manila.

On September 7, 1950, defendants filed a motion to dismiss on the grounds, (1) that there is another case pending in the Court of First Instance of Manila between the same parties and over the same subject-matter; (2) that the claim sought by plaintiff has been condoned; and (3) that the courts has no jurisdiction over the subject-matter of the action. Plaintiff filed an opposition to this motion but the same was denied.

On November 27, 1950, defendants filed their answer setting up certain special defenses and a counterclaim. Plaintiff filed a motion to dismiss the counterclaim, to which defendants filed a written opposition. After the reception of the evidence, the court rendered judgment ordering the defendants to vacate the property involved and to pay the plaintiff a monthly rental of P100 from October, 1949 up to the time the defendants shall have vacated the property, and the costs of action.

On June 2, 1951, defendants filed a motion for reconsideration and the same having been denied, they brought the case on appeal to the Court of First Instance where they filed another motion to dismiss based on the same grounds set forth in the municipal court. This motion was also denied for lack of merit.

On August 14, 1951, defendants filed their answer wherein they reiterated the same special defenses and counter-claim they set up in the municipal court. Plaintiff moved to dismiss the counterclaim, and this motion was granted.

When the case was called for hearing on March 14, 1952, defendants moved for postponement on the ground that their principal witness could not be present. Counsel for the plaintiff objected to the postponement. However, the parties agreed to hear the testimony of one L. G. Marquez, an expert witness for the plaintiff, who testified and was cross-examined by counsel for the defendants. Thereafter, upon agreement of the parties, the continuation of the hearing was set for March 24, 1952.

When the case was called for the continuation of the hearing on said date, neither the defendants, nor their counsel appeared, whereupon the court allowed the plaintiff to present his evidence, and on March 25, 1952, it rendered decision ordering defendants to vacate the property and to pay a monthly rental of P200 from October, 1949, until the time they shall have actually surrendered the property, with costs.

On April 14, 1952, defendants filed a motion for reconsideration and new trial, accompanied by affidavits of merit on the ground that their failure to appear on March 24, 1952 was due to "mistake and excusable negligence" as provided for in section 1 (a), Rule 37, of the Rules of Court and when this motion was denied, defendants took the case directly to this court imputing three errors to the lower court.

Defendants contend that the municipal court has no jurisdiction to entertain the case because, in their answer, they averred that, long before the filing of the present case of ejectment, they had filed against the plaintiff in the Court of First Instance of Manila a case in which they seek the annulment of the deed of mortgage executed by Roman de Jesus, their father, without their knowledge and consent, on a property which belonged to the spouses Roman de Jesus and Maria Angeles, and that, inasmuch as the annulment case, wherein the ownership of the property is in issue, is still pending determination, the municipal court has no jurisdiction over the ejectment case upon the theory that the same cannot be determined without first passing upon the question of ownership of the property.

This contention cannot be sustained in the light of the facts averred in the complaint which appear supported by the evidence submitted by the plaintiff. These facts show that the plaintiff is the exclusive owner of the property in question having purchased it at the auction sale carried out by the sheriff sometime in October, 1948, and that because of the failure of the mortgagor, or his successors in interest, to redeem it within the period of redemption, the Register of Deeds of Manila issued Transfer Certificate of Title No. 23590 in favor of the plaintiff. The facts also show that after plaintiff had become the owner of the property he found the defendants occupying it without having entered into a contract of lease with him, or having made any arrangement for its occupancy, or without paying any rental therefore, and for this reason, he filed this ejectment case against them before the municipal court. These facts clearly show that this case comes within the jurisdiction of the municipal court. The circumstance that there is pending in the court of first instance a case in which defendants are claiming one-half of the property as heirs of the deceased wife of the mortgagor cannot and does not deprive the municipal court of its jurisdiction. The most that could be done in the light of the present situation is to suspend the trial of the ejectment case pending final determination of the annulment case, but the pendency of the latter cannot have the effect of removing the former from the jurisdiction of the municipal court.

This case may be likened to that of *Fulgencio vs. Natividad*,[*]45 Off. Gaz., No. 9, 3794, decided on February 14, 1948, in which petitioner pleaded that, before the complaint for detainer was filed against him, he had brought an action in the proper court to compel the respondents to resell to him the lot and the house erected thereon upon payment of the purchase price, and, therefore, the case does not come within the jurisdiction of the municipal court. In overruling this plea, this Court said: "Granting that petitioner has the right to repurchase the property, he cannot invoke it until after the competent court shall have rendered judgment as prayed for by him. Hence the allegation in the detainer case that he had brought an action in the proper court to compel the resale to him of the lot and the house erected thereon, did not raise the question of title to the property and for that reason did not remove the case from the jurisdiction of the municipal court. As already stated, the plea of another pending action to compel the resale to the petitioner of the property involved in the detainer case is an admission that the title thereto is not vested in him. Such being the case, the municipal court had jurisdiction to try and decide the detainer case."

A different consideration, however, should be made in connection with the second issue to the effect that the lower court erred in denying the motion for reconsideration of the defendants notwithstanding the explanation given by them of their failure to appear at the continuation of the trial and the affidavits of merit attached to the motion showing unmistakably that such failure was due to "mistake and excusable negligence" and not for purposes of delay.

It should be recalled that when this case was called for hearing on March 14, 1952, counsel for defendants moved

for postponement on the ground that their principal witness was sick and could not appear. Counsel for the plaintiff objected to the postponement. However, the parties agreed to hear the testimony of one L. G. Marquez, a witness for the plaintiff, who testified and was cross-examined by counsel for defendants. Thereafter, upon agreement of the parties, the continuation of the hearing was set for March 24, 1952. And when the case was called for continuation on that date, neither defendants, nor their counsel, appeared. Nevertheless, the court allowed the plaintiff to present his evidence, and thereafter rendered decision accordingly. But when, days after, defendants filed a motion for reconsideration explaining that their failure to appear was due to "mistake and excusable negligence" of their counsel, supporting their claim with the requisite affidavits of merit, the court curtly denied the motion.

We believe that, in the light of the circumstances of the case, the court did not act properly when it denied said motion for reconsideration considering the explanation given by defendants and their counsel in their affidavits of merit. This is what counsel says in his affidavit: "That upon motion of the undersigned affiant, the Honorable Judge Higinio Macadaeg postponed the hearing of said case on March 24, 1952, but the undersigned affiant in noting the date of the postponement on his diary or memorandum, committed an honest mistake by noting it down opposite March 25, 1952, instead of March 24, 1952, consequently he was not able to appear in court on the proper date, and so with the defendants, as they were of the belief that the hearing was on March 25, 1952 and not on March 24, 1952." And these facts also appear in the affidavits subscribed to by the defendants.

These facts, which are not contradicted, constitute in our opinion a proper ground for a new trial under section 1 (a), Rule 37, for, no doubt, they constitute "mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights." This is more so considering that, according to the answer, defendants have a meritorious defense.

Wherefore, the decision appealed from is reversed. It is ordered that this case be remanded to the lower court for a new trial with the understanding that the new trial should await the final termination of the annulment case pending in the Court of First Instance of Manila (Civil Case No. 11267), without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Montemayor, and Jugo, JJ., concur.

REYES, J. B. L., J.:

I concur in the result, reserving my vote on the question of jurisdiction.

[*] 80 Phil. 224

DISSENTING

LABRADOR, J.:

I dissent.

The land subject of the action appears to have been conjugal property of the deceased Roman de Jesus and his wife, whose successors in interest are the defendants-appellants. The deceased Roman de Jesus mortgage the property to plaintiff-appellee, it is true, but the mortgage affected only his undivided one-half share in the property. The action by the defendants-appellants to annul the mortgage over their undivided one-half share necessarily involved both title to the property and the right to the possession thereof. The present action of plaintiff-appellee really and actually, under the circumstances, involves or should involve both the title and the

right to possession. The action presented by defendants-appellants to annul the mortgage over their share bars the present action, therefore. And as the issue really involved is title, the municipal court which entertained the action of unlawful detainer has no jurisdiction. The action should, therefore, be dismissed on two grounds, lack of jurisdiction and pendency of another action between the same parties over the same cause. Nothing can be gained by the continuation of the case in the court below.

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