

JESUSA R. QUIAOIT, PETITIONER, VS. HON. FRANCISCO CONSOLACION, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH II, COURT OF FIRST INSTANCE OF DAVAO, VAL-ERIANA B. BLANCES AND FRAN...

G.R. No. L-41824. September 30, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

Special civil action for certiorari and mandamus to nullify the Order of respondent Judge dated August 5, 1975, rejecting the admission of petitioner's supplemental answer in Civil Case No. 7406,[1] and to command said respondent to admit the afore-mentioned pleading.

On March 14, 1972, the spouses Francisco Blances and Valeriana B. Blances (private respondents) filed with the Court of First Instance of Davao City an action to recover possession of Lot No. 160, situated at Guianga District, Davao City, containing about five (5) hectares more or less, and to secure a declaration of nullity of the transmission of rights and sale of improvements over said property (Annex "A"), as well as the supplementary agreements executed by the afore-mentioned spouses in favor of Jesusa R. Quiaoit (petitioner) on May 18, 1966 in consideration of the sum of 16,800.00 on the ground that since the property was acquired under Republic Act No. 477, its sale is expressly prohibited by said Act. The action for annulment is predicated upon their claim that it could not have been their intention to transfer or sell their rights over the afore-cited property, but to use said property as security for the loan of P6,800.00.

On May 2, 1972, defendant (petitioner herein) filed her answer alleging, among others, the following:

"3. That defendant specifically denies the allegation in paragraph 5 that plaintiffs are 'bonafide claimants, occupants, and possessors and vendees of the land in question,' the truth of the matter being that, despite the condition expressed in the Deed of Sale of said land executed by the National Abaca and Other Fibers Corporation (NAFCO) in their favor 'not to sell and/or encumber said property within a period of ten (10) years from the date of issuance of the Certificate of Title', contrary to said condition, plaintiffs mortgaged in 1966, or within the prohibitive period, the same lot to the Rural Bank of Davao City, so plaintiffs had to sell the land to herein defendant to avoid the foreclosure of said mortgage;

"4. That the allegations in paragraph 6, that the deed of sale of the land in question is null and void is specifically denied for being a wrong conclusion of law, and that if the plaintiffs desire to repurchase or reacquire the property, it is because the same has already been developed and improved by herein defendant, so much that its value has considerably increased;" (Annex "B", Petition)

During the pendency of the case, or on April 1, 1975, the Board of Liquidators promulgated its resolution, dated March 25, 1975, cancelling the award of the afore-mentioned Lot No. 160 to respondent Francisco Blances for violation of the provisions of Republic Act No. 477 and declaring the payments made therein forfeited in favor of the Board and ordering that said land be disposed of in accordance with the provisions of Republic Act No. 477.

On the basis of the cancellation of the award, petitioner filed with the lower court a motion to dismiss the complaint on the grounds that (1) the claim or demand set forth in the complaint has been extinguished; and (2) plain-tiffs have no more cause of action against the defendant. Respondent Judge denied the motion for lack of merit. After the denial of her motion to dismiss, petitioner filed a motion to admit supplemental answer, alleging that the cancellation of private respondents' award was not taken up in her answer because it was handed down only on April 1, 1975. There having been no opposition to said motion, the same was granted and the supplemental answer admitted. On motion for reconsideration of private respondents, however, said Order admitting the supplemental answer was set aside by the trial court on August 5, 1975. Petitioner moved for reconsideration, but the same was denied by the respondent Judge in an Order dated September 15, 1975, stating as follows:

"* * * * *

"It is enough to state that the cancellation of the award on April 1, 1975 does not in any wise have any bearing in so far as between the parties herein.

"The cancellation of the award, for a disregard or violation of the condition does not produce an automatic reversion of the property to the State, nor work to defeat the grantee's right to recover the property.

'Clearly, until and unless an appropriate proceeding for reversion is instituted by the State, and its reacquisition of the ownership and possession of the land decreed by a competent court, the grantee can not be said to have been divested of whatever right that he may have over the same property.' (Ras v. Sua, No. L-23302, Sept. 25, 1968.)

"This is a question between the State and the Awardee, the Plaintiff herein.

"Further, even granting that there is a cancellation of the award or even a reversion to the State is decreed, the Defendant does not acquire any right over such property, since the land cancelled or reverted is declared vacant, and subject to raffling in accordance with Section 3 of Republic Act No. 477.

* * * * *

Contending that she has no other plain, speedy and adequate remedy in the ordinary course of law, and that the aforesaid Orders of the lower court were issued in a capricious and whimsical manner and in grave abuse of discretion, petitioner filed the present petition.

The issue then is whether or not the trial court erred in rejecting the admission of the supplemental answer and in declaring that the cancellation of the award has no bearing in the case, much less affect private respondents' right to recover the property.

I

To begin with, it may be relevant to note that the ground of dismissal herein invoked by petitioner ? that the complaint states no cause of action ? may be alleged in a later pleading or even at the trial, in which case, the motion is to be resolved in the light of the evidence which may be submitted. The rule is explicit that the defense of "failure to state a cause of action" is not covered by the rule that defenses and objections not pleaded in the motion to dismiss or in the answer are deemed waived. This defense of lack of cause of action may be alleged in a motion to dismiss after the answer has been filed, or by a motion for judgment on the pleadings, or at the trial on the merits.[2] Thus, it has been held that a motion to dismiss for failure to state a claim is so basic that it may even be raised on the trial.[3]

A motion to dismiss may also be allowed for some special reason even after the trial of the case has already

begun. Thus, this Court has allowed the filing of a motion to dismiss, even after defendant's answer and after hearing has been commenced, upon grounds other than plaintiff's failure to state a cause of action or court's failure to acquire jurisdiction over the subject matter of the action, i.e., where evidence that would constitute a ground for the dismissal of the complaint was discovered during trial. This Court explained that the motion serves to supplement the averments of defendant's answer and to adjust the issues to the testimony of plaintiff himself.[4]

Now, on the main issue, it appears that the initial reason for the trial court in rejecting the admission of the supplemental answer is that said court had already passed upon the defenses contained in the supplemental answer when it resolved petitioner's motion to dismiss.

As to whether or not the court a quo committed a re-versible error, it is necessary to advert to certain settled procedural rules and principles.

It is a well-established rule of practice and procedure that an order denying a motion to dismiss and its subsequent motion for reconsideration is interlocutory in nature. Such order does not terminate the proceedings much less does it finally dispose of the contentions of the parties.[5] It cannot, therefore, be appealed until after the rendition of the judgment on the merits.[6] In *Moreno*,[7] it was emphasized that unless the order of denial "constituted clearly a grave abuse of discretion or was issued without or in excess of jurisdiction, the error, if any, should be corrected by appeal in due time, after trial and judgment on the merits, and not by the extraordinary writ of prohibition". The obvious remedy of the movants whose motion to dismiss has been denied is, in the words of *Harrison Foundry & Machinery v. Harrison Foundry Workers Association*,[8] "to interpose, as defenses in their answer, the objections raised by them in the motion to dismiss, then proceed to trial, and, in case of an unfavorable decision, bring the case * * * on appeal in due time, so that the Appellate Court 'may rule on all the issues once and for all.'"[9] In other words, since an order denying a motion to dismiss is interlocutory, the remedy of a defendant is to interpose, as defenses in his answer, the objections raised by him in the motion to dismiss, then proceed to trial, and in case of adverse decision, reiterate the issue on appeal.

The denial of a motion to dismiss the complaint for failure to state a cause of action does not operate to restrict in any manner the subsequent pleadings of the parties.[10] In a case where at the outset of the trial the defendant moved to dismiss the complaint on the ground that plaintiff's statement failed to disclose a cause of action, and such motion was denied, the defendant was not precluded from incorporating the same objection in his answer.[11]

In the case at bar, petitioner's action in interposing the aforesaid defense in his supplemental answer was, therefore, in accord with the foregoing rules. In rejecting petitioner's supplemental answer, the respondent Judge, therefore, committed a reversible error.

II

Respondent Court's reliance in the rule enunciated in *Ras v. Sua*,[12] appears inapposite. Here, it is undisputed that in connection with Lot No. 160, no sales patent or certificate of title has ever been issued to respondent Francisco Blances. Neither has it been shown that Blances has paid in full the consideration agreed upon in the deed of sale, much less is it asserted that he has complied with all the requisites for the issuance of a sales patent in accordance with the provisions of the Public Land Law, as amended. There is also no question that the Board of Liquidators, as successor of the National Abaca and Other Fibers Corporation (NAFCO), has the power and authority under the provisions of Republic Act No. 477 to cancel or give due course to a sales contract or application regarding lands under its administration. Thus, it was explained in *Alvarez v. Board of Liquidators*,[13] that the agreement denominated "Contract of Sale" with respect to public agricultural lands awarded to applicants under Republic Act No. 477 "is not really a deed of actual sale, but should be considered as

a mere application". It was stated therein that after the approval of such application and the awardee pays in full the consideration agreed upon in the deed of sale, it will be still necessary for the Board to determine whether or not the awardee has complied with the provisions of Republic Act No. 477 and the pertinent provisions of the Public Land Law, relative to the requisites for the issuance of a sales patent. It was held therein that if the Board finds the applicant not qualified because he did not actually occupy the land but merely served as a dummy, or has violated the law, then it can cancel the contract.

In the case at bar, it is conceded that the private respondents have executed conveyances in violation of section 8 of Republic Act No. 477 and that the award to respondent Francisco Blances has been cancelled by the Board of Liquidators before the issuance of the corresponding sales patent. As it is settled that the Board of Liquidators had the full power and authority to cancel the award, as the so-called "contract of sale" "is not really a deed of actual sale, but should be considered as a mere application",^[14] the cancellation of the application would, therefore, preclude private respondents from asserting any proprietary or possessory rights over the said public land. Indeed, the right of an applicant to public land does not become absolute until after he has complied with all the requirements of law.^[15] Consequently, private respondents could not insist on a formal action for reversion under section 101 of the Public Land Law. As ruled by this Court in *Francisco v. Rodriguez*,^[16] the afore-cited section "may be invoked only when title has already vested in the individual, e.g. when a patent or a certificate of title has already been issued".

Unlike in *Ras v. Sua*, supra, the issue is, therefore, not the automatic reversion of the property to the State. Rather whether, in view of the cancellation of the award to private respondents by the Board of Liquidators for violation of the provisions of Republic Act No. 477, the action instituted by said parties had already become moot.

WHEREFORE, in view of the foregoing, the writ prayed for is granted and the Orders of respondent Judge, dated August 5, 1975 and September 15, 1975, are hereby set aside. Costs against private respondents.

Aquino and Concepcion, Jr., JJ., concur.

Fernando, J., (Chairman), concurs in both opinions.

Barredo, J., concurs in a separate opinion.

[1] Entitled "Valeriana B. Blances and Francisco Blames, Plaintiffs, versus Jesusa R. Quiaoit, Defendant."

[2] Section 9, Rule 9, Revised Rules of Court; *Azur v. Provincial Board*, 27 SCRA 50; *De Jesus v. Manglapus*, 81 Phil. 114; *Community Investment, etc. v. Garcia*, 88 Phil. 215, 220-222.

[3] *Ginsburg v. Standard Oil Co. of New Jersey*, 9 Fed. Rules Service 398.

[4] *Bugayong v. Ginez*, 100 Phil. 616.

[5] *Yu Zoat v. Hugo*, 93 Phil. 613; *Hodges v. Villanueva*, 90 Phil. 255.

[6] *Sy v. Dalman*, 22 SCRA 834; *Ramos v. Ardant Trading Corporation*, 23 SCRA 974.

[7] *Moreno v. Macadaeg*, 7 SCRA 700, 704.

[8] 8 SCRA 434.

[9] Cf. *Sy v. Dalman*, supra, citing *Harrison Foundry and Machinery, supra*, *Bautista v. De la Cruz*, L-21107, Dec. 24, 1963; *Arches v. Belosillo*, L-23534, May 16, 1967.

[10] *Young v. Aetna Life Ins. Co.*, 2 Fed. Rules Service 84.

[11] " * * While a motion to dismiss admits, for the purposes of the consideration thereof, the truth of all facts well pleaded in the complaint, such admission does not preclude the movant, in the event the motion is denied, from filing an answer denying every material allegation of the complaint. *Smetal Corporation v. Family Loan Co.*, 1935, 119 Fla 497, 161 So 438; *Olin's, Inc. v. Avis Rental Car System of Florida*, Fla 1958, 104 So 2d 508. The presumption of truthfulness attending consideration of the sufficiency of a complaint to state a cause of action does not operate to relieve the plaintiff of the burden of proof resting upon him. A fortiori, denial of a motion to dismiss the complaint for failure to state a cause of action does not operate to restrict in any manner the subsequent pleadings of the parties. The subject presumption is indulged as an aid to orderly pleading, for the limited purpose of passing upon the sufficiency in law of the pleading attacked, and is not binding upon the court in the consideration of the case on final hearing. It is not to be regarded as an acknowledgment or used as evidence, or considered as equivalent to evidence. *Bennett v. Senn*, 1932, 106 Fla 446, 144 So 840." (*Lehew v. Larsen*, Fla. App., 124 So. 2d 872, 85 ALR 2d 821, 823.)

[12] 25 SCRA 153.

[13] 4 SCRA 195.

[14] *Alvarez v. Board of Liquidators*, supra.

[15] Cf. *Juanico v. American Land Commercial*, 97 Phil. 221; *Ocampo v. Delizo*, L-32820-21, January 30, 1976, 69 SCRA 216.

[16] 6 SCRA 442.

CONCURRING OPINION

BARREDO, J.:

I concur in the result that this case should be returned to respondent court for further proceedings. I believe, however, that for a better appreciation of the procedural points involved and so that the proceedings below may be channelled in such a way as to terminate the controversy between the parties once and for all and most expeditiously, it is necessary to lay down the specific course that should be pursued by respondent court upon the resumption of said proceedings.

It should be noted for more clarity that the motion to dismiss of petitioner Quiaoit We are dealing with here was filed after he had already filed his answer and that said motion is based on facts which took place subsequent to such answer, namely, the cancellation by the Board of Liquidators of the contract in favor of the respondents Blances and upon which the latter predicated the disposition by sale of the land in question to petitioner. In other words, said motion to dismiss was based on facts not alleged in the complaint but on facts averred by the defendant himself in his own motion. Thus, contrary to the assumption of the main opinion, the motion was really not premised on "failure of the complaint to state a cause of action." To be more precise, the defendant did not ask for dismissal on that ground, but on the more substantial one to the effect that, actually and in fact and in law, the plaintiffs have no more cause of action or have already lost the same as a consequence of the cancellation of the contract in their favor purportedly granting them rights of ownership over the land in question. Such being the case, there was need for Quiaoit to have proved by evidence the facts alleged by him in his motion, unless the

same were not denied by the Blances, which seems to have been what happened. Otherwise stated, although respondent court merely ruled out the motion "for lack of merit" without stating its reasons for so holding, it must be deemed to have re-solved or passed upon the merits of Quiaoit's ground for dismissal. And this posture of respondent court is best gleaned from the manner it disposed of the motion for admission now in question, quoted in the main opinion. (P. 3.)

While I agree that even upon such premise of a definite resolution of the substantive issue raised in the motion, the denial of Quiaoit's motion to dismiss was merely interlocutory, I consider it necessary, for obvious reasons, to elucidate on the implications of the ruling in *Harrison Foundry & Machinery*, cited in the main opinion, that the plain remedy of movants whose motion to dismiss is denied is "to interpose, as defenses in their answer, the objections raised by them in the motion to dismiss, then proceed to trial, and in case of an unfavorable decision, bring the case on appeal in due time, so that the Appellate Court 'may rule on all the issues once and for all.'" (P. 5.) To my mind, it is not in-dispensable to reiterate the grounds of a motion to dismiss, after its denial, as affirmative defenses in the answer. I submit that precisely because of the interlocutory character of such denial, the defendant is not precluded from reopening at the conclusion of the trial or at any stage thereof as the evidence presented may so justify, the matter of dismissal on the grounds previously alleged in the motion to dismiss, without the need of reiterating the same as affirmative defenses in the answer.

Although there is the opinion of Chief Justice Moran that the denial of a motion to dismiss is a definite resolution of the grounds alleged, which may no longer be alleged in the answer as affirmative defenses,[1] I reiterate I agree with the holding in the main opinion of Justice Antonio that such denial is only interlocutory, except that, at the same time, I maintain it must be made clear that it is thus permissible for the defendant to have the grounds of his motion reventilated at the trial by presenting more evidence or arguments in the course thereof, with or without alleging them as affirmative defenses, since the motion itself can be utilized as basis thereof, constituting as it does an integral part of the whole proceeding as effectively as the answer. True it is that a motion to dismiss is not a pleading, but once filed and resolved, it must have its corresponding effect upon further relevant proceedings.

I am afraid that Moran's view is unduly restrictive. I cannot see any reason why the defendant has to be denied the logical opportunity at the trial to further substantiate his grounds for dismissal, considering not every defendant is able to amply do it at the hearing of his motion to dismiss, on account of the limitations, even if unwarranted by the rules, that such a proceeding entails in actual practice, such as the notion that it should be more or less summary, brief, etc. On the other hand, the *Harrison Foundry & Machinery* ruling invoked in the main opinion should not be understood as indicating nothing more than the plain or formal reiteration in the answer of the grounds for dismissal, with the only ultimate recourse of taking them up with the appellate court and unaccompanied by the right of the defendant to present additional evidence thereon or to otherwise reventilate them at the trial in order that they may be duly and fully tried and finally passed upon in the decision of the case. I am of the considered opinion that neither Moran nor *Harrison Foundry & Machinery* should be followed literally. I hold that the best rule is that when a defendant interposes a motion to dismiss, he must be afforded the fullest opportunity to ventilate the grounds thereof even after the motion has been denied and to submit them for the final consideration of the court in its decision, by way of reviewing its previous resolution of the motion rendered before the trial.

With the foregoing clarifications of the procedural points related to the effect the denial of a motion to dismiss has upon the right of the defendant to further invoke the grounds therefor at the latter stages of the proceeding in the trial court, with or without reiterating them as affirmative defenses in the answer, the next point that needs elucidation is in connection with the manner in which respondent court resolved Quiaoit's motion to admit his supplemental answer.

To begin with, it was procedurally incorrect for respondent court to have passed, at that stage of the proceedings, on the merits of the affirmative defenses which were alleged in the supplemental answer. At that stage, the only issue to resolve was whether or not the defendant could reiterate in a supplemental answer the grounds invoked by him in his motion to dismiss filed after he had already answered the complaint, because the facts upon which the motion was predicated occurred after the filing of the answer. This is a question purely procedural and does not involve the substantive issue of whether or not the affirmative defenses alleged in the supplemental answer are valid or meritorious. It is thus evident that in prematurely acting on the merits of said grounds, respondent court acted without authority of the rules.

And then, as it has turned out, the substantive issue itself as to the merits of the affirmative defenses of Quiaoit predicated on the cancellation of the government's award of the land in question to Blances was, according to the main opinion, wrongly resolved by respondent court. Much as I agree that respondent court did err also in that respect, it seems to me that technically speaking, We should not have fallen into the same procedural fault committed by respondent court of passing on the merits of the affirmative defenses interposed in the supplemental answer inasmuch as the same is being presented only for admission and not for resolution. Indeed, that issue is more properly a fit subject only in the review upon appeal of the final decision of the trial court.

But having thus actually resolved the substantive issue between the parties, which to me appears to be of pivotal consequence to the ultimate controversy in their case, I feel that the way is now clear for respondent court to earlier dispose of the action before it. With the main opinion's ruling on the merits of the basic affirmative defense in Quiaoit's supplemental answer in the sense that the same is well taken and that the ruling in *Ras vs. Sua*, 25 SCRA 153, relied upon by respondent court is inapplicable to the situation here obtain-ing, hence the cause of action of the Blances has completely lost legal basis, there remains nothing more for respondent court to do than to dismiss the case for being moot and academic, as prayed for by Quiaoit himself. This may be done by immediately setting, after the supplemental answer has been admitted as indicated in the judgment herein, for special hearing pursuant to Section 5 of Rule 16, the affirmative defenses alleged in said answer and thereafter issuing the corresponding order of dismissal, unless the Blances can raise any other substantially important new point, which is hardly conceivable.[2] As a matter of fact, as a practical procedural step, Quiaoit's motion for admission of his supplemental answer could have been treated as a motion for reconsideration of the denial of his motion to dismiss and resolved accordingly as such, on which hypothesis, the subject case may likewise be terminated by the respondent court just reversing itself in line with the ruling in the main opinion and immediately dismissing the complaint as prayed for by Quiaoit in his motion to dismiss.

[1] Moran, *Rules of Court*, 1970 ed., p. 513.

[2]The theory of respondent court that the cancellation of the award to the Blances does not necessarily and automatically entitle Quiaoit to any right in the land in question does not justify the continuation of the action, since that is a matter that is between Quiaoit and the state to settle, without the intervention of the Blances.

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