

DAMASO RACOMA, PLAINTIFF-APPELLANT, VS. MAXIMINA FORTICH, FRANCISCO ALESNA AND HIS WIFE FLORENCIA LOFRANCO DE ALESNA, DEFENDANTS-APPELLEES.*G.R. No. L-29380. June 10, 1971*

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

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Direct appeal,[1] on points of law, from the dismissal by the Court of First Instance of Bohol of a complaint filed therein by the plaintiff-appellant Damaso Racoma against the defendants-appellees Maximina Fortich, Francisco Alesna and Florencia Lofranco de Alesna, docketed as Civil Case No. 1930, for reconveyance and possession on the ground of mistake or fraud, of a parcel of land of 62,881 square meters, in Sagbayan, Bohol, the grounds for the dismissal being the affirmative defenses (lack of cause of action and *res judicata*) alleged in the answer.

The proceedings held in the court *a quo* are narrated in the dismissal order, as follows:

"A brief history of the pleadings filed by the parties in the instant case is in order. The defendant (Maximina Fortich) submitted a motion to dismiss the original complaint. Before said motion to dismiss could be resolved by the Court, the plaintiff submitted a FIRST Amended Complaint, hence, the Court, in its order dated June 15, 1967, denied the motion to dismiss. Thereafter, the defendant submitted a responsive Answer to the First Amended Complaint, alleging therein, among other things, as affirmative defenses the grounds averred in the aforecited motion to dismiss the original complaint. On October 23, 1967, the plaintiff filed a SECOND Amended Complaint by impleading therein, in compliance with the order of the Court dated October 27, 1957, two (2) additional new de-fendants, namely: spouses Francisco Alesna and Florencia Lofranco de Alesna. In an order dated December 16, 1967 the Court admitted the SECOND Amended Complaint; hence, their responsive Answer to the FIRST Amended Complaint shall be considered reproduced as a responsive answer to the SECOND Amended Complaint (Section 3, Rule 11, Revised Rules of Court). As elsewhere stated hereinbefore, the Court, in the aforequoted order dated January 5, 1968, set the case at bar for January 17, 1968 for preliminary hearings on the affirmative grounds averred in defendants' Answer to the FIRST Amended Complaint which appear to be indubitable grounds for a motion to dismiss, pursuant to and in accordance with the provisions of Section 5, Rule 16 of the Revised Rules of Court. Such were the status of the pleadings of the parties herein as of the January 17, 1968 hearings of this case when counsel for plaintiff prayed for the admission of his THIRD Amended Complaint.

"For purposes, therefore, of the present pre-liminary hearings the averments stated in the SECOND Amended Complaint shall, as it were, be the ones considered for the reason that the ORIGINAL and the FIRST AMENDED Complaint shall, by the rules, be considered to have disappeared from the records of the case as judicial admissions because they have been superseded by the SECOND Amended Complaint (*Lucido vs. Calupitan*, 27 Phil. 148; *Bastida vs. Menzi*, 58 Phil. 188). It is also obvious that neither can the averments in the THIRD Amended Complaint be considered, for the purpose of the present preliminary hearings, for the simple reason that the same has not yet been admitted by the Court."

A substantial part of appellant's brief is impertinent, for its statement of facts and assignment of errors are

erroneously predicated upon the third amended complaint, which had not been admitted and not passed upon by the lower court and is not the subject of the appealed order of dismissal. What the court considered in dismissing the complaint is not the third but the second amended complaint and the answer of the defendants to the first amended complaint, in the hearing mentioned by the court, in accordance with Section 5, Rule 16, of the Revised Rules of Court, which provides:

"Section 5. Pleading grounds as affirmative defenses. - Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed."

in relation with Section 3, Rule 11, which provides:

"Section 3. Answer to amended complaint. - If the complaint is amended, the time fixed for the filing and service of the answer shall, unless otherwise ordered, run from notice of the order admitting the amended complaint or from service of such amended complaint. An answer filed before the amendment shall stand as an answer to the amended complaint, unless a new answer is filed within ten (10) days from notice or service as herein provided." (emphasis supplied)

Despite the impertinence in the statement of facts and in the assignment of errors in appellant's brief, the portion thereof which is pertinent, and the record on appeal afford ample basis for the determination of whether the order of dismissal based on the grounds of lack of cause of action and res judicata was legally justified or not.

In holding that the complaint (second amended complaint) does not allege a sufficient cause of action, the court below observed that while the complaint alleged that the defendant Maximina Fortich, either by mistake or fraud, obtained title to the land which the plaintiff seeks to be reconveyed to himself, the complaint failed to state with particularity the ultimate facts and circumstances constituting the alleged mistake or fraud and that such failure is fatal to the sufficiency of a cause of action, the general averment of mistake or fraud being merely a conclusion of law, not an allegation of ultimate facts. The court is in error. Examining the allegations of the complaint (second amended complaint) filed with and admitted by the lower court, a cause of action is sufficiently alleged. The plaintiff has defined his primary right, which is, that he is the owner and possessor of a parcel of land for some 30 years; that he had applied for a free patent to it in 1952 and the Director of Lands has approved his application (Paragraphs 2 and 4 of the Second Amended Complaint). The plaintiff also alleged that the defendant had violated his right by including his land in the bigger parcel of land over which the defendant had obtained a certificate of title in 1964 (paragraphs 5 and 6), and that the defendants, claiming adverse ownership, wanted to oust the plaintiff from his land (paragraphs 7 and 9). The allegations even particularized fraud, in view of paragraphs 10 and 11 of the Second amended complaint (Record on Appeal, page 30) reading:

"10. That the herein plaintiff has no knowledge whatsoever of the application for registration filed by defendant Maximina Fortich and the order of decree of registration issued in favor of the defendant Maximina Fortich by this Honorable Court until on February 25, 1967, when defendant Maximina Fortich, thru her representative Francisco Alesna, attempted to enter into the land of the plaintiff which is above described, in order to gather the products therefrom, claiming that the parcel of land now in question belongs to her and is included in her application for re-gistration as above-stated;

11. That the defendant Maximina Fortich, either by mistake or fraud and with the intention of depriving the plaintiff of his right of ownership and possession of the parcel of land in question together with all the improvements therein, filed her application for registration knowing full well that at the time she filed her application for re-gistration, the parcel of land now in litigation belonged and still belongs to the herein plaintiff as lawful owner and possessor thereof;

Clearly, therefore, the two (2) factors that a cause of action must consist of, namely, (1) plaintiff's primary right

and (2) the defendant's delict or wrongful act or omission which violates plaintiff's primary right,[2] were alleged in the complaint; and the allegations thereof could meet the test of sufficiency of stating a cause of action, because a valid judgment may be rendered thereon if the alleged facts were admitted or proved.[3]

The other ground upon which the lower court dismissed the complaint is *res judicata*. It is stated in the order of dismissal that the plaintiff had admitted that the property in controversy was applied for by defendant Maximina Fortich in a cadastral proceeding and under Act 496; that the proceedings were in rem and, therefore, the whole world, including the plaintiff, were parties thereto and bound by the judgment thereon. This statement of the court was more specifically restated in its denial for reconsideration to the effect that the plaintiff and the defendant were contending adversary parties in Cadastral Case No. 15, G.L.R.O. Record No. 1469. Since no evidence was taken to support such stated finding but the orders depended only on the consideration of the allegations of the parties in the second amended complaint and the answer, it is obvious that the lower court was referring to the legal effect of the conclusiveness against all persons of the in rem decision in the cadastral case rather than the actual fact that the plaintiff was a claimant who appeared in the said case, for he alleged in his complaint that he "has no knowledge whatsoever of the application for registration filed by defendant Maximina Fortich and the order of decree of registration issued in favor of the defendant Maximina Fortich by this Honorable Court until on February 25, 1967 ..." (Record on Appeal, page 30). Such being the case, then an action for reconveyance is available to the plaintiff, the decree of registration notwithstanding, for ...

"..., it is now a well-settled doctrine in this jurisdiction that the existence of a decree of registration in favor of one party is no bar to an action to compel reconveyance of the property to the true owner, which is an action in personam, even if such action be instituted after the year fixed by Section 38 of the Land Registration Act as a limit to the review of the registration decree, provided it is shown that the registration is wrongful and the property sought to be reconveyed has not passed to an innocent third party holder for value (*Cabanos vs. Register of Deeds*, 40 Phil. 620; *Dizon vs. Lacap*, 50 Phil. 193; *Bagaya vs. Guilao*, 64 Phil. 347, and cases cited therein; *Escobar vs. Locsin*, 74 Phil. 86; *Sumira vs. Vistan*, 74 Phil. 138; *Palma vs. Cristobal*, 77 Phil. 712; *Aban vs. Cendana*, L-11989, May 23, 1958)."[4]

The reason was stated in *People vs. Cainglet*, L-21493-94, 29 April 1966, 16 SCRA 748, citing previous cases, as follows:

"However, this conclusiveness of judgment in the registration of lands is not absolute. It admits of exceptions. Public policy also dictates that those unjustly deprived of their rights over real property by reason of the operation of our registration laws be afforded remedies. Thus, the aggrieved party may file a suit for reconveyance of property or a personal action for recovery of damages against the party who registered his property through fraud, or in case of insolvency of the party who procured the registration through fraud, an action against the Treasurer of the Philippines for recovery of damages from the Assurance Fund. Through these remedial proceedings, the law, while holding registered titles indefeasible, allows redress calculated to prevent one from enriching himself at the expense of others. Necessarily, without setting aside the decree of title, the issues raised in the previous registration case are relitigated, for purposes of reconveyance of said title or recovery of damages."

FOR THE FOREGOING REASONS, the appealed order is hereby reversed, and the case remanded to the court a quo for further proceedings. Costs against the appellees.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Ruiz Castro, J., did not take part.

- [1] The records were received in the Supreme Court on 25 July 1968 (Rollo, page 1).
- [2] Pomeroy Code Rem., Sec. 519.
- [3] Amedo v. Rio y Olabarrieta, 92 Phil. 214.
- [4] Caladiao, et al. v. Santos Vda. de Blas, L-19063, 29 April 1964, 10 SCRA 691, 694.

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