

CRESENCIO ESPEJO, PETITIONER, VS. MARTINO MALATE AND COURT OF FIRST INSTANCE OF LEYTE, BRANCH I, RESPONDENTS.

G.R. No. L-48612. January 27, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

This is a petition for review on certiorari of the order of the Court of First Instance of Leyte in Civil Case No. 5036, dismissing the case on the ground of lack of jurisdiction after the parties had rested their respective cases.

On January 31, 1974, the plaintiff Cresencio Espejo filed said civil case against defendant Martino Malate entitled "Quieting of Title to and Possession of Real Property and Cancellation of Tax Declaration" before the Court of First Instance of Leyte, Branch I, then presided by Judge Gregorio Collantes. The complaint alleged, among others, "that the plaintiff is the absolute owner and actual possessor of a parcel of coconut land containing an area of 14 hectares, more or less, and assessed at P4,250.00, situated in Barrio New Kawayan, Tacloban City, which is a portion of Lot No. 5329, Tacloban Cad. No. 220 . . ."; "that the plaintiff acquired said parcel of land by purchase on May 13, 1963 from the brothers Amando and Saturnino Sañosa, and since then and up to the present time he has been in possession thereof in good faith and with just title, in concept of owner, uninterruptedly and adversely against the claims of any individual person or persons whomsoever, paying land taxes due thereon, and planting coconut trees and introducing thereon other improvements"; "that the plaintiff's possession tacked to that of his predecessors-in-interest over the said land has been more than forty (40) years, and to proclaim this possession, the plaintiff had this land declared in his name under Tax Declaration No. 18316 (which starts with the year 1962) on May 15, 1963"; "that the defendant Martino Malate, a former tenant of the plaintiff over the land, with evident bad faith, without the knowledge, much less consent, of the plaintiff, on December 29, 1964, had a portion of the land declared in his name under Tax Declaration No. 19484 (which starts with the year 1963); "that the above-cited tax declaration of the defendant, embracing as it does a portion included within the limits of the land described in paragraph 3 of the complaint, coupled with the defendant's claim of ownership of 9.8 hectares therein as described in tax declaration and his attempt to assume possession thereof by clearing the land and gathering the coconut therefrom, the latest of which was in December, 1973, has cast a cloud upon the ownership and possession by the plaintiff of the lot described in paragraph 3 of the complaint"; "that plaintiff's Tax Declaration No. 18316, being based on a bona fide claim of ownership and actual possession which started on May 13, 1963, and being the older tax declaration, should prevail over Tax Declaration No. 19484 of the defendant; the cancellation of the latter tax declaration is in order"; "that a judicial declaration as to who is the owner and entitled to possession of the parcel of land is imperative to forestall breaches of the peace, bodily injury to persons, mayhem or perhaps even loss of life"; and "that the plaintiff is entitled to have the cloud cast upon his ownership and lawful possession of the land by the defendant removed thru a judicial declaration that the plaintiff is the owner thereof and legally entitled to the possession thereto." (Rollo, page 27, Record on Appeal, pp. 2-5.)

The defendant Martino Malate, on February 20, 1974, answered the complaint denying specifically all the allegations therein and counter-alleged "that he is the absolute and exclusive owner of the land and had been in

actual and physical possession thereof, in the concept of an owner since 1926 introducing improvement thereon." He also alleged affirmative special defenses and counterclaims.

On November 4, 1974, the defendant filed a motion to dismiss on the ground: "(a) that the court has no jurisdiction over the subject of the action or suit; and (b) that the court has no jurisdiction over the nature of the action or suit."

With respect to the first ground, the defendant argued "that the subject matter of the above-entitled case is a portion of Lot No. 5329, Tacloban Cad. No. 220, which is a public land hence, its disposition is governed by the Public Land Act. Section 4 of Commonwealth Act No. 141, as amended, provides that 'subject to said control, the Director of Lands shall have direct control of survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and his decision as to questions of facts shall be conclusive when approved by the Secretary of Agriculture and Natural Resources.' It is clear that the Director of Lands has the jurisdiction over said subject matter, being a public land." (Rollo, p. 27, Record on Appeal, pp. 16-17.) The defendant further concluded that the plaintiff had not exhausted the administrative remedy available to him of filing the claim in the Bureau of Lands.

As to the second ground, the defendant argued that the action of the plaintiff was for forcible entry, and was not properly filed, because when the plaintiff filed the case in January, 1974, it was only one year from the accrual of the cause of action, which was in December, 1973, as may be gleaned from the complaint; and that being a forcible entry case, it must be brought in the proper municipal or city court, and not in the court of first instance.

On November 18, 1974, the plaintiff filed an opposition to motion to dismiss arguing that the respondent Court has jurisdiction over the land in dispute in the matter of deciding as to who, between the plaintiff or the defendant, has the better right of possession.

Plaintiff points out that the question of who has prior possession of the land is alleged in paragraphs 4 to 9 of the complaint, paragraphs 3 and 4 of the answer and paragraph 2 of the affirmative defenses; that he has alleged that his possession tacked to that of his predecessors-in-interest has been for more than forty years, while on the other hand, the defendant has averred that he has been in possession of the land in question for more than forty-seven years; that the question presented, therefore, is as to who of them has prior possession over the controverted land; and that the action, therefore, is an accion publiciana over which the respondent Court has jurisdiction, as ruled by the Supreme Court in *Rallon vs. Ruiz*, 28 SCRA 332.

The respondent Court, on December 5, 1974, denied the motion to dismiss. On July 16, 1975, it issued an order requiring the plaintiff to amend the complaint in order to conform with their claim of possession regarding the property. On July 31, 1975, the plaintiff filed an amended complaint eliminating therefrom the allegations as to his claim of ownership, and emphasizing instead his claim of possession.

The defendant filed his opposition to the motion to admit amended complaint on the following grounds:

"A. That the amendment sought to be made is a complete change of the theory of the case both in the complaint and the evidence so far adduced;

"B. That the amended complaint conferred jurisdiction on the Honorable Court but before the said amendment the Honorable Court did not have jurisdiction to try the case as envisioned on the original complaint and the evidence so far adduced; and

"C. That court cannot admit the said amended complaint for having no jurisdiction to act on it and that the amended complaint does not conform to the evidence so far adduced by the plaintiff."

On August 11, 1975, the Court issued an order admitting the amended complaint reasoning out as follows:

"... This court believes that the plaintiff wanted to emphasize who has the prior possession of the land in question, the plaintiff or the defendant. It is admitted that the land in question is a public land, and that the Director of Lands and the Secretary of Agriculture and Natural Resources have jurisdiction over the disposition of the public land conformably with Section 4 of Commonwealth Act No. 141. The question of ownership will not be decided by this court.

"The only question that will be decided by this court in this case is, who has the prior possession of the public land in question. Over this question as to who has prior possession of the land in question and, therefore, entitled to the exclusion of the other, this court has jurisdiction as shown by the decision of the Supreme Court. ... " (Rollo, p. 27, Record on Appeal, pp. 45-46.)

For the second time, on September 27, 1975, another motion to dismiss was filed by the defendant on the ground "that the Honorable Court has no jurisdiction over the subject-matter of the case as the plaintiff has not exhausted the administrative remedies afforded." It was argued that "there is a pending administrative investigation of the subject-matter of the case at bar between the plaintiff and defendant and, therefore, the instant case should await the resolution of the administrative case." The defendant was referring to a case wherein he is a protestant in the administrative proceeding entitled "Cresensio Espejo vs. H.A. No. 206783 (E-121507) Felipe Mendiola (Prop. transferee), Delia Pastor (transferee)."

The plaintiff filed his opposition to the motion to dismiss arguing "that the second motion to dismiss filed by the defendant was based on the same ground as that of the first motion to dismiss as well as his opposition to the motion to admit amended complaint; and that the pendency of the case in the Bureau of Lands is no bar to the present action involving merely the question of who has prior possession of the land in question."

The court a quo denied the second motion to dismiss in an order dated December 16, 1975.

On June 18, 1976, after the plaintiff had rested his case, the defendant filed a motion to dismiss on demurrer to evidence reiterating the grounds raised in his two previous motions to dismiss.

The respondent Court, thru Judge Jesus N. Borromeo (temporarily presiding the sala vacated by the retirement of Judge Collantes), on September 10, 1976, issued an order denying the defendant's motion for judgment on demurrer to evidence.

After the defendant presented his evidence, the court, thru respondent Judge Jose P. Arro, issued an order dated January 23, 1978 dismissing the complaint for lack of jurisdiction and declaring the proceedings taken therein as null and void.

In this appeal, the plaintiff-petitioner raises the following assignment of errors:

"I. The trial court erred in holding that, when the court issued an order to amend the complaint so that the issue of ownership is deleted from the original complaint and for the amended complaint to substantially alter the theory of the complaint — from recovery of ownership to recovery of possession, the admission of the amended complaint does violence to the provision of Section 3, Rule 10 of the Rules of Court.

"II. The trial court erred in holding that it is without jurisdiction and declaring the proceeding in the case null and void."

The defendant-respondent commented that what was dismissed for lack of jurisdiction by the court a quo was an action for reivindicatoria or action for ownership; that the action being for ownership or accion reivindicatoria is shown by the contents of the prayers of the complaint itself; and that since the original complaint failed to allege prior possession, the lower court has no power to place in the original complaint the theory of prior

possession by a mere stroke of an order to amend the complaint.

Both parties were required to submit their respective memoranda. Only the petitioner did, and the case was submitted for decision without any memorandum for the respondents.

We agree with the petitioner that the question of who had prior possession of the land was brought out in the original complaint. An examination thereof would reveal that there it contained enough allegations of facts constitutive of the issue of prior possession. The allegations relating to the length and nature of possession by the plaintiff of the land in question, the tacking of the plaintiff's possession to that of his predecessors-in-interest; the adverse claim by the defendant; and as to whose tax declaration should prevail, support the contention of the petitioner that the question of "who has prior possession over the controverted land and is, therefore, entitled to such possession to the exclusion of the other, is contained in the original complaint.

While the said complaint had categorically alleged a claim of ownership, this Court had had the occasion to declare such kind of a complaint as an *accion publiciana*, and to regard the allegation of ownership therein as a "mere surplusage."

In *Molina vs. De Bacud*, 19 SCRA 956, "(i)n her complaint before the Court of First Instance of the province (Isabela), respondent alleged that she was the absolute owner and possessor of these lands, having inherited them from her mother, Catalina Siccuan; that in her lifetime her mother was in 'continuous, public, quiet and adverse possession' of the lands, in the concept of an owner; and that in 1944 Julian Molina, employing 'violence, force, strategy and intimidation,' seized possession of Lot 1 and a part of Lot 2 and cut the trees found therein. As relief, she asked the Court to declare her the owner of the lands and to order Molina to deliver to her the lands and products and pay her damages."

The petitioners therein contended "that after finding that the lands in question are public lands, the trial Court should have dismissed this case because under Section 4 of the Public Land Act (Commonwealth Act No. 141), the authority to dispose of public lands is vested exclusively in the Director of Lands.

We struck down said argument as without merit because "the authority given to the Land Department over the disposition of public land does not exclude the courts from their jurisdiction over possessory actions, the public character of the land notwithstanding. This is such an action and the fact that on her complaint respondent claimed the lands in ownership did not change the nature of her action. The allegation of ownership should be regarded as a mere surplusage."

In *Diaz vs. Macalinao*, 102 Phil. 999, involving substantially similar facts, this Court ruled that ". . . (t)he action presented is not one of ownership, although plaintiffs allege ownership and pray that the land be declared in their favor. . . . The allegation of ownership and the prayer therefor may, therefore, be considered as a mere surplusage and this case be considered as an action for possession."

In *Reyes vs. Sta. Maria*, 91 SCRA 164, an action to quiet title and to recover possession, it was held that ". . . (s)uch an action was clearly an *accion publiciana* for the recovery of the right to possess (*possession de jure*) (if not an *accion reivindicatoria*) falling within the lower court's jurisdiction . . ."

"The lower court was clearly in error in issuing its dismissal order on its mistaken notion 'that the allegations of facts are merely constitutive of an action for unlawful detainer since the complaint shows on its face that respondents' refusal to deliver possession of the property was due to their adverse claim of ownership of the same property and their counter allegation that they bought the same . . . , and, therefore, petitioners' action was clearly one for recovery of their right to possess the property (*possession de jure* . . .)" (See also *Medina vs. Valdellon*, 63 SCRA 278; *Ledesma vs. Marcos*, 9 Phil. 618.)

Scrutinizing the allegations in the original complaint in the light of foregoing pronouncements of this Court, the conclusion comes easy that while the question of ownership was raised in the original complaint, the said pleading likewise placed at issue the question of who had the better or prior right of possession. It has been a recognized principle of law in our jurisdiction that the courts have jurisdiction to determine who has prior possession of public land and entitled to be protected in such possession. (Rallon vs. Ruiz, Jr., 28 SCRA 332; Pitargue vs. Sorella, 92 Phil 5; Molina vs. De Bacud, 19 SCRA 956; Villaflor vs. Reyes, 22 SCRA 385; Madamba vs. Araneta, 106 Phil. 103; Bueno vs. Patanao, 9 SCRA 794; Angcao vs. Punzalan, 12 SCRA 706; and Aguilon vs. Bohol, 79 SCRA 482.)

Section 15 of Rule 6 of the Rules of Court provides that "all pleadings shall be liberally construed so as to do substantial justice." The original complaint of the petitioner, entitled, "Quieting of Title to and Possession of Real Property and Cancellation of Tax Declaration" could properly be construed as a plenary action to recover possession or an accion publiciana, in addition to its being one for recovery of ownership.

As the petitioner correctly argued, "there were two (2) issues brought out in the original complaint — the principal one, the issue of ownership over the land in dispute, and the secondary but no less important one, the issue of who has prior possession thereof. Over the first issue, the trial court undoubtedly has no jurisdiction, the land in question being a public land, but over the second, the trial court undoubtedly has jurisdiction."

The lower court, therefore, erroneously held that it is devoid of jurisdiction over the subject matter of the action in declaring that the petitioner's action is solely to quiet title or to recover ownership of real property. The issue of who has the prior possession being unmistakably alleged in the original complaint, the trial court acquired jurisdiction over the case insofar as said issue is concerned.

Jurisdiction of the courts is conferred and governed by law (Leoquinco vs. Canada Dry Bottling Co., 37 SCRA 535), and is determined by the pleadings (Pineda vs. CFI of Davao, 1 SCRA 1020), whether it be jurisdiction over the subject matter or jurisdiction over the nature of the action. "Jurisdiction of a court over the subject matter . . . should not be made to depend on the literal averments of the complaint — indirectly on the ability of the parties to word or phrase their pleadings — where the actual issues are evident from the record of the case." (Leoquinco vs. Canada Dry Bottling Co., supra).

The trial court having acquired jurisdiction over the subject matter as well as over the nature of the action on the original complaint, it could validly issue an order to amend the original complaint. The deletion of the issue of ownership from the original complaint and the amended complaint having limited the issue to prior possession did not substantially alter the theory of the complaint.

"In determining whether a different cause of action is introduced by amendments to the complaint, what is to be ascertained is whether the defendants shall be required to answer for a liability or legal obligation wholly different from that which was stated in the original complaint. Any amendment will not be considered as stating a new cause of action if the fact alleged in the amended complaint show substantially the same wrong with respect to the same transaction, or if what is alleged refer to the same matter but are more fully and differently stated, or where averment which were implied are made in express, and the subject of the controversy or the liability sought to be enforced remains the same." (Rubio vs. Mariano, 49 SCRA 319).

Besides, a superficial examination of the original complaint and the amended complaint would show that both pleadings are virtually identical. The only difference was that the words "absolute owner" were deleted from the original complaint, and "prior right of possession" emphasized and particularized in the amended complaint. As a matter of fact, notwithstanding the new reglementary period given to the defendant within which to answer the amended complaint, he opted not to file a new answer and instead relied on his original answer.

ACCORDINGLY, the petition for review on certiorari is hereby granted.

The order dated January 23, 1978 of the respondent Judge is hereby annulled and set aside, and the trial court is ordered to render judgment on the merits of the case.

Costs against private respondent.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

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