

CEFERINO INCIONG AND CONCEPCION G. INCIONG, PLAINTIFFS AND APPELLANTS, VS. MIGUEL TOLENTINO, DEFENDANT AND APPELLEE.

G.R. No. 10923. September 23, 1959

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Direct appeal to this Court from an order of the Court of First Instance of Batangas dismissing plaintiff's complaint.

On October 8, 1952, Miguel Tolentino filed an action in the Court of First Instance of Manila against Ceferino Inciong and his wife Concepcion G. Inciong (Civil Case No. 17822) to recover damages for a libel committed by the defendant Ceferino Inciong and for which he was found guilty in a criminal case filed against him. This case having been dismissed for improper venue upon defendants' representation that plaintiff was a resident of Balayan, Batangas, Tolentino refiled it in the Court of First Instance of Batangas (Civil Case No. 256) but against Ceferino Inciong alone. To the complaint filed in the latter case, defendant Inciong filed an answer with a counterclaim for damages. The answer is not in the record on appeal but according to the court below, the counterclaim was based on the "general allegation that the baseless complaint filed by plaintiff contains certain false allegations." Not content with that counterclaim, Ceferino Inciong and his wife later filed in the same court a separate action for damages (Civil Case No. 380) against Miguel Tolentino on account of certain alleged false and libelous allegations contained in his first complaint, which, as already stated, had already been dismissed for improper venue.

It is alleged in the complaint filed by the spouses that Tolentino's complaint in Civil Case No. 17722 contained defamatory and damaging allegations, among them (1) that Inciong was the "Supremo of the Samahang Magbubukid"; (2) that Inciong and his wife owned real and personal properties, "forming part and parcel of their conjugal property, including the income from the Samahang Magbubukid"; and (3) that Inciong had "an awful record, being the permanent Supremo of the Samahang Magbubukid".

Instead of answering the complaint, the defendant Tolentino filed a motion to dismiss on the grounds that there is another action pending between the same parties for the same cause and that the complaint states no cause of action. Later, he also invoked prescription as an additional ground for dismissal, calling attention to the fact that the present action was filed only on May 24, 1954, or beyond the one-year period prescribed in Art. 1147 of the New Civil Code, considering that the cause of action, which was the complaint filed by defendant in Civil Case No. 17722, arose in October, 1952 when that complaint was filed. Sustaining the motion on the ground that there is another action pending between the same parties for the same cause, the lower court dismissed the complaint but "without prejudice to plaintiff's including their causes of action as counterclaim in the answer filed in Civil Case No. 256." From that order of dismissal, plaintiffs took the present appeal.

The order of dismissal must stand.

As stated by the court below, Tolentino's complaint for damages in Civil Case No. 256 is "more or less a reproduction" of the complaint in Civil Case No. 17722, which, as insisted on by appellants, is the basis of their complaint for damages, except that Concepcion G. Inciong was dropped as party defendant and the allegation that she and her husband owned real and personal properties "forming part and parcel of their conjugal property including the income from the Samahang Magbubukid" omitted in the later case. Since Ceferino Inciong as defendant in Civil Case No. 256 has already filed an answer to the complaint in that case with counterclaim because of the alleged libelous and false allegations therein, which as already seen are the same allegations contained in the complaint in Civil Case No. 17722, it is apparent that to allow the present action to continue would only encourage a multiplicity of suits. The argument that Concepcion G. Inciong not having been included as party defendant in Civil Case No. 256 could not file any counterclaim therein does not preclude the dismissal of the complaint in the present case. As pointed out by appellee, it is difficult to see how the allegation in the first complaint, which was omitted in the refiled case and which is simply an allegation of ownership of conjugal property, could validly constitute a cause of action for damages.

In any event, the order of dismissal must be upheld on the basis of prescription, one of the grounds set up by defendant Tolentino in support of his motion below to dismiss the complaint. As held in the recent case of *Tejuco vs. E. R. Squibb & Son Phil. Corp., et al.* (103 Phil., 594), a civil action arising from libel prescribes in one year. In the present case, it appears that more than one year had elapsed from the filing of the alleged libelous complaint in Civil Case No. 17722 on October 8, 1952, copy of which was received by appellants shortly thereafter, to May 24, 1954 when the present action was instituted.

Wherefore, the order of dismissal appealed from is hereby affirmed, with costs against the appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

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