

MAURICIO SAPALICIO, PLAINTIFF AND APPELLANT, VS. MATEA CALPE ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 11031. April 01, 1918*

Ponente: ARAULLO, J.

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The plaintiff filed this complaint against the defendants in the Court of First Instance of Albay on July 31, 1914. Two causes of action are stated in the complaint and as to each the proper prayer for relief is made. A demurrer having been presented and sustained by the court, the plaintiff presented on November 12, an amended complaint, also containing two causes of action. The first relates to the coownership between the plaintiff and the defendants, except Bernabe Matriz, as to a lot described in said complaint. As to this cause of action the court is asked to order the partition and material division of said lot and the corresponding adjudication thereof among said plaintiff and defendants, except Matriz. The second relates to the absolute and exclusive ownership of the plaintiff as to two other lots described also in the complaint, the possession of which is, according to the plaintiff, illegally detained by the defendants under the first cause of action, named Petrona Calpe and Lupo Rafama, and Bernabe Matriz, who was not included in the first cause of action. As to this second cause of action, the plaintiff asks that he be declared owner of said lot and that said three defendants be condemned to pay to the plaintiff the annual income by them received until the date of their delivery.

A demurrer was again interposed by two of the defendants in the second cause of action on the grounds (1) that there was a misjoinder of parties defendants and (2) that no legal interest existed between the defendants in the first cause of action and those in the second. The court on November 30, 1914, sustained the demurrer on the ground that the amended complaint was in substance the same as the original complaint. It was also stated that the case would be dismissed unless the plaintiff should, within the time fixed by the rules present a second amended complaint. The plaintiff failed to do it, but asked the court to specify the reasons for which said demurrer was sustained. This motion was denied by the court. To the order denying said motion as well as to the order sustaining the demurrer due exception was taken by the plaintiff, who also stated that he preferred not to amend the complaint and asked that final judgment be rendered upon the allegations of the amended complaint and the demurrer. The court on January 4, 1915, stated the grounds for the order sustaining the demurrer and granted the plaintiff ten days within which to present a second amended complaint, with the warning, that otherwise the complaint would immediately be dismissed. The plaintiff not having heeded the warning, the court on February 3, 1915, rendered judgment, dismissing the case, with costs against the plaintiff. From this judgment the plaintiff appealed to this court and filed the corresponding bill of exceptions.

The grounds for the order sustaining the demurrer are as follows:

"In the original as well as in the amended complaint two causes of action are stated. There is a misjoinder of parties defendants and of causes of action in both complaints. In one as well as in the other partition of property and recovery of damages are asked against different interested parties. Some of the defendants in one of the causes of action do not have any interest whatever in the other and vice versa. In both causes of action

no community of in-terest is alleged against all the defendants."

Paragraph 2 of section 90 of the Code of Civil Procedure, which the appellant invokes in his brief to show that the criterion of the court as to the grounds above transcribed is erroneous, in effect, says: that if the complaint contains more than one cause of action, each must be stated in a separate paragraph, which shall contain all the facts con-stituting that specific cause of action; but this surely does not authorize the allegation of various causes of action in one complaint against distinct persons, without regard to any rule whatever and to the relation of the different causes of action to the respective defendants even if each cause of action is separately stated. On the contrary, in view of the silence of said Code of Civil Procedure in force in these Islands, with respect to this point, the rules adopted in the Code of Civil Procedure of California and other States of the American Union, should be taken into account, according to which the different causes of action should affect all litigants, that is, all the parties to the action, and should also originate from the same fact or transaction.

"In equity as a general rule the court will not subject parties to the expense, vexation and delay of several suits, where the transactions constituting the subject of the liti-gation, or out of which the litigation arises, are so connected by their circumstances as to render it proper and convenient that they should be examined in the same suit, and full relief be given by one comprehensive decree. * * * By virtue of statute in many if not all the so-called code states there may be a joinder in one complaint of two" or more causes of action where they arise out of the same transac-tion, the word 'transaction' as used in such statutes mean-ing something which has taken place whereby a cause of action has arisen, and embracing not only contractual re-lations but occurrences in the nature of tort as well." (Rul-ing Case Law, Vol. 1, paragraph 38, p. 362.)

"It is generally a prerequisite to the joinder of causes of action that all of the causes should affect all of the parties to the action; both parties defendant and parties plaintiff. And courts of law will not take cognizance of distinct and separate claims or liabilities of several persons in one suit, though standing in the same relative situations. Statutes obtain in some jurisdictions requiring as a prerequisite to a joinder of causes of action in one action that all the causes affect all the parties to the action, and this is required although the causes of action arise out of the same trans-action. But it is not necessary under statutes or in the absence of statute that all the parties should be affected equally, it being enough that they are all affected. * * * There is an important exception to the general rule that it is a prerequisite to the joinder of causes of action that all the causes must affect all the parties to the action, and the exception is this, that causes of action to foreclose mortgage and other liens may be joined in one action notwithstanding that all the causes do not affect all the parties defendant. The rule as to identity of parties stated above does not obtain in equity. There it is not indispensable to a joinder of causes of action that all the parties should have an in-terest in all the matters contained in the suit, but it is sufficient if each party has an interest in some material matter in the suit, and it is connected with the others." (Ruling Case Law, Vol. 1, paragraph 39, p. 364.)

In the amended complaint two different causes of action are alleged. The first is for partition of property and the second is for ejectment. The property, which is the subject-matter of the action of ejectment, is not any of those that are the subject-matter of the action for partition, and, fur-thermore, one of the defendants in the second cause of action is not a defendant in the first.

Therefore, the demurrer interposed to said amended com-plaint was properly sustained by the court and the judg-ment, dismissing the case for the reason that the plaintiff did not file a second amended complaint within the period granted to him, was correct. Nevertheless, adhering to the practice observed by this court in analogous cases, a new opportunity should be given to the plaintiff to present a new complaint according to the tenor of this decision.

The judgment, dismissing the complaint, is therefore af-firmed, it being understood, however, that the plaintiff may file a new complaint within the period which the court below may grant him, with the costs of this instance

against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Street, Malcolm, Avanceña, and Fisher, JJ., concur.

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