

TERESA GUERRERO ET AL., PLAINTIFFS AND APPELLANTS, VS. SIA YUTIAN (ALIAS, TIANA), DEFENDANT AND APPELLEE.

G.R. No. 11900. March 16, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

This appeal presents for resolution the legal question of whether or not the trial court erred in sustaining defendant's demurrer to the plaintiffs' third amended complaint and in dismissing the action with costs.

The facts are these: Plaintiffs filed their first complaint on January 19, 1915, in the Court of First Instance of Manila. Defendant demurred. The demurrer was sustained by the trial court. Plaintiffs thereupon filed their second amended complaint. Defendant again demurred. The demurrer was sustained with an order that unless the plaintiffs, within the period of ten days from the date of notification, presented a substantially amended complaint the court would entertain a motion for the dismissal of the case. Plaintiffs thereupon filed their third amended complaint, reading as follows:

"The plaintiffs allege:

"1. That they are the legitimate daughters of Jose Mariano Guerrero, who died in or about the year 1885.

"2. That the plaintiffs, surnamed Guerrero, are married the first of them, or Teresa Guerrero, to Agustin Velarde; the second, Fortunata Guerrero, to Pedro Flordeliza; and the third, Fausta Guerrero, to Dominador Idquiban.

"3. That the said Jose Mariano Guerrero at his death left property consisting of a house of strong materials, carabaos and cattle, in the pueblo of Santa Cruz, Province of Zambales, P. I., and money, cloth, rice in the ear, threshed rice, and other effects in his store, the value of all of which property amounts to P27,800.

"4. That upon the death of the said Jose Mariano Guerrero, his brother, a Chinaman named Tuana, took possession of the property above-mentioned, for the purpose of administering it, as in fact he did administer it, in behalf of his nieces, the herein plaintiffs.

"5. That, upon the death of the said Tuana, the property, together with its earnings, was delivered into the possession of the herein defendant Sia Yutian (alias) Tiana—Who is a son of the sister of the said Tuana and of Jose Mariano Guerrero—in order that the defendant might continue the administration of the same.

"6. That the said Tuana and Sia Yutian, the herein defendant, during their lifetime, recognized the plaintiffs' rights and from the time of the death of the said Jose Mariano Guerrero, plaintiffs' father, until the year 1905, delivered to them for their subsistence a part of the earnings of said property, but that since 1905 the defendant ceased to make any further such delivery to the plaintiffs.

"7. That, in the year 1905, and often subsequently, when the defendant failed to deliver to the plaintiffs for their subsistence any part of the earnings of said property, the latter demanded of the defendant that he make a settlement of his administration and deliver to the plaintiffs such part of the property as belonged to them, but that

the defendant, notwithstanding the many demands made upon him. has done nothing more than to promise to make such delivery, which up to date, he has not made.

"8. That the surplus earnings which the defendant failed to deliver to the plaintiffs for their proper subsistence during the defendant's administration, and which are still in his possession, now amount to the sum of P10,000.

"Therefore the plaintiffs pray the court to render judgment against the defendant for the sum of P37,800, together with the costs of the present suit, and to grant the plaintiffs any and all other relief as may be equitable and just."

Defendant again demurred on four grounds: (1) That the Court has no jurisdiction of the person of the defendant or of the subject of the action; (2) that the plaintiffs have no legal capacity to sue; (3) that the third amended complaint does not state facts sufficient to constitute a cause of action; and (4) that the third amended complaint is ambiguous, unintelligible, and uncertain. The trial court found that the plaintiffs had not complied with the order of the court that they present a substantially amended complaint, and ordered the dismissal of the case with costs against the plaintiffs. Plaintiffs appeal, assigning as errors (1) the sustaining of the demurrer of the defendant and (2) the dismissal of the case.

Without going into the matter at length, we find that the lower court was entirely justified in sustaining the demurrer. We further find that the lower court was justified in dismissing the case. A majority of this court are, however, of the opinion that, in the interest of the equity, the order should be so modified as to permit the plaintiffs to prosecute a new action. It is the common practice of the United States Supreme Court and of other appellate courts to dismiss "without prejudice." As so modified, the order is affirmed, with costs against appellants. So ordered.

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

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