

JOSE ESCAY, VS. HON. JOSE TEODORO, SR., JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, AND FAUSTO GONZALES, JR., RESPONDENTS.

G. R. No. 12054. January 31, 1959

Ponente: REYES, A., J.

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REYES, A., J.:

This is a petition for certiorari to obtain relief from an order of the Court of First Instance of Occidental Negros in Civil Case No. 2868, entitled Fausto Gonzales, Jr., plaintiff, vs. Jose Escay, defendant, denying the admission of defendant's amended answer filed in said case. It appears that Jose Escay is the assignee of a leasehold on the Hacienda Esmeralda in Occidental Negros. The lease was stipulated to be for a period of twenty years "a contar de la zafra de 1927-1928", and on the theory that this stipulated period was to end with the 1953-54 crop, Fausto Gonzales, as owner and lessor of the said hacienda, brought suit on November 27, 1953 under article 1683 of the New Civil Code to have Escay allow him to cultivate the land, and pendente lite was able to secure a preliminary injunction to restrain the defendant from preventing his entry in the premises for the purpose of cultivating the fields already harvested.

The defendant sought to have the writ dissolved, and upon his motion for that purpose being denied, he asked that the case be dismissed as premature, contending that even on the theory that defendant was not entitled to any extension the lease was not to expire until after the 1954-55 crop. But the motion to dismiss was denied, whereupon he brought the case here on certiorari, alleging that the lower court had no jurisdiction over the subject matter. And pending resolution of the certiorari case he filed his answer in the lower court claiming, inter alia, that the lease should be considered extended for seven additional years on account of the last war and announcing his intention to file an additional counterclaim should the preliminary injunction not be set aside. Then when his petition for certiorari was dismissed by this Court he filed an amended answer in the court below alleging that the leasehold in question was not to expire until after the crop year 1954-55 at the earliest, and setting up an additional counterclaim as follows:

"That by reason of the plaintiff's unwarranted entry into the disputed portion of Hda. 'Esmeralda' since December, 1953, or thereabouts, the defendant was prevented from raising and producing therein his sugar crops beginning with the crop year 1954-55 and has also been deprived by the plaintiff of the use of the corresponding sugar allotment of said hacienda until the termination of the period of the lease in the year 1960-61, thereby causing the defendant damages, as follows:

"P15,000.00, more or less, for actual expenses in the cultivation of the 1954-55 crop up to the time plaintiff took possession of the same; P15,000.00 for profits from said 1954-55 crop which could have been reasonably expected and realized; P15,000.00 for yearly profits from 1955-56 to 1960-61, or P90,000.00 for a period of six (6) crop years, which defendant could reasonably expect."

The lower court, however, ruled that no action could be taken on the amended answer in the absence of a motion for leave to file it. The defendant sought to cure the alleged defect with notice to the adverse party that the motion

to admit the amended answer would be heard on a day specified. But on February 4, 1957, the lower court denied the motion, saying that the admission of the amended answer "will further delay the termination of this case which has been pending since November 21, 1950."

It would further appear that on February 6, 1957, the lower court ordered postponment of the hearing on the merits to the 28th of that month, and taking advantage of that postponment defendant asked for a reconsideration of the order denying the admission of his amended answer on the ground of delay. But the lower court denied the motion as not well-founded. Hence the present petition for certiorari.

It is contended, in the first place, that the lower court abused its discretion in ruling that no action could be taken on the amended answer on the ground that it was not accompanied by a formal motion, since the amended answer itself contains a notice to the other party that it would be submitted to the court on "January 10, 1957 at 8:30 A.M. or as soon thereafter as counsel may be heard." It appears, however, that the amended answer, which was dated January 8, was not filed until January 9, and it was also on this latter date that adverse counsel received a copy thereof with notice that it was to be submitted to the court for admission on January 10. Obviously, the notice was insufficient under Rule 26, section 4, so that the lower court cannot be charged with abuse of discretion in ruling as it did.

It is next charged that the lower court abused its discretion in denying on February 9, 1957 defendant's motion for reconsideration of its refusal to admit defendant's amended answer, considering that on that date the trial of the case on the merits had already been postponed to the 28th of that month so that the admission of the amended answer would not have caused any prejudice, aside from the fact that the amended answer did not change or alter defendant's theory of the case as expounded in his original answer. We note, however, that in refusing to admit the amended answer, the lower court was impressed by the fact that the case had already been pending for a long time and may have apprehended that the amended answer if admitted might provoke a reply from the adverse party and thereby occasion a further delay in the disposition of the case. In any event, the said amended answer, as defendant himself says, does not change or alter "the theory of the case or the Original Answer", and as a matter of fact, the only new matter sought to be brought out refers to the damages alleged to have been suffered by him as a result of the issuance of the preliminary injunction. Considering that such damages could well be alleged in a supplemental pleading, we see no sufficient reason for defendant's insistence in having them set out in an amended answer. In the circumstances, we do not feel that the lower court has, by refusing to admit the amended answer in order to avoid further delay, committed such a grave abuse of discretion as would justify the issuance of the writ applied for.

Wherefore, the petition for certiorari is denied, and the preliminary injunction issued in this Court lifted. With costs against the petitioner.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Reyes, J.B.L., and Endencia, JJ., concur.

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