

BERNARDO BENEDICTO, PLAINTIFF AND APPELLANT, VS. IGNACIO CHIONG OSMEÑA, DEFENDANT AND APPELLEE.*G.R. No. 12863. February 29, 1960*

Ponente: LABRADOR, J.

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Appeal from a decision of the Court of First Instance of Cebu, Hon. Jose M. Mendoza, presiding, dismissing an action filed therein by Bernardo Benedicto against Ignacio Chiong Osmeña.

The record discloses that on March 3, 1949, the Cebu Burnt Area Committee approved the application of Bernardo Benedicto, plaintiff-appellant, to lease lot No. 2152-G for 10 years at the rate of P306.00 per annum, payable in advance. But on March 24, 1949 the same committee approved another resolution, No. 7, amending the first resolution, No. 6, dated March 3, 1949, in the sense of leasing the same lot No. 2152-G to Ignacio Chiong Osmeña, defendant-appellee herein, for 10 years at the same yearly rental of P306.00, payable in advance. And on July 30, 1949, the said committee again approved a third resolution, No. 8, declaring that as no lease contract was entered into by and between the Committee and Bernardo Benedicto, and the lot subject of the resolution had been leased to Ignacio Chiong Osmeña, Resolution No. 6, dated March 3, 1959, should be annulled and declared without effect, Ignacio Chiong Osmeña remaining as the lessee of said lot No. 2152-G. On March 30, 1949, after the approval of the second resolution, No. 7, a formal agreement of lease of the lot in question was executed between the Cebu Burnt Area Committee as lessor and Ignacio Chiong Osmeña as lessee.

Because of the revocation of the first resolution, No. 6, plaintiff-appellant filed this action in the Court of First Instance of Cebu, alleging that the land in question, No. 2152-G, had been leased to him; that he had introduced improvements thereon; that the period of his lease had not yet been terminated because it was for a period of ten years; and that the revocation of the first lease granted in his favor is illegal, the said revocation having been made without any cause and after the plaintiff had paid the rentals in accordance with the resolution. The plaintiff also alleges in his complaint that the defendant herein, had filed an action for ejectment against him, plaintiff, in the municipal court of the City of Cebu, in which defendant herein sought to oust and eject him, plaintiff, from the lot in question, and that judgment was rendered by said court against the plaintiff herein, which judgment has become final. The prayer of the complaint contains the following requests: that Resolutions Nos. 7 and 8 of the Cebu Burnt Area Committee be declared null and void and without effect and Resolution No. 6 declared as valid and subsisting; that the sheriff be enjoined from executing the judgment rendered by the municipal court in the case mentioned above.

The defendant filed an answer alleging that the lease application of the plaintiff had been voided by the resolutions of the Cebu Burnt Area Committee; that plaintiff has no lease contract with the said Committee; that the resolutions of the Cebu Burnt Area Committee are perfectly legal and valid and the defendant had a perfected lease contract with the Cebu Burnt Area Committee over the land described in the complaint. As special defenses, defendant alleged that the Cebu Burnt Area Committee was a necessary party to the action; that the defendant has already made a valid contract of lease with the Cebu Burnt Area Committee. By way of counter-claim defendant

alleged that plaintiff knows that he has no right of action and his present action has caused the defendant actual damages of P3,000, moral damages of P5,000 and attorney's fees in the sum of P1,000.

Trial having been furnished, the court below rendered the judgment dismissing the action on the following grounds: that the mere approval of Resolution No. 6 does not constitute a contract for the lease of the land between the plaintiff and the Cebu Burnt Area Committee and that, on the other hand, a contract was expressly signed after the approval of the subsequent resolutions; that the plaintiff herein failed to pay the stipulated rentals at the time it became due, wherefore, the Cebu Burnt Area Committee had the right to rescind the said contract and approve the subsequent resolutions and enter into the subsequent contract with the defendant herein. The court further held that as the action involves the determination of the validity of the official actuations of the Cebu Burnt Area Committee, the latter is an indispensable party without whom no final determination can be had.

On this appeal appellant assigns various supposed errors, but it is not necessary for us to consider them for the reason that they are not material and relevant to the present case and one important ground stated in the decision of the court below justifies the dismissal of the action. The ground for dismissal is that the action should have been against the Cebu Burnt Area Committee, the validity of whose resolutions is raised in the complaint. The real party-defendant to the action instituted by plaintiff in this case is the Cebu Burnt Area Committee, the validity of whose acts and resolutions is put in issue before the Court. Such issue cannot be determined with the present defendant alone, without including the Cebu Burnt Area Committee as a party-defendant. As plaintiff-appellant did not include the Cebu Burnt Area Committee as a party-defendant, the action against the present defendant-appellee alone cannot proceed.

Plaintiff also alleges that the defendant-appellee herein had instituted an action of ejectment against him, that judgment was rendered against plaintiff-appellant, and that the judgment had already become final. Said final judgment bars the present action. The plaintiff-appellant could have raised in his defense Resolution No. 6 upon which he claims his right to the lease, in order to thwart the action for ejectment. Having failed to do so in the previous action for ejectment against him, he may not now in this case present said issue as a ground for the present action. This ruling is supported by express provisions of the rules. (Rule 9, Section 10.) The above rule bars the present action against the defendant.

The two grounds hereinbefore mentioned are sufficient to sustain the action of the lower court dismissing the complaint filed in this case, and as indicated above, it is unnecessary for us to resolve the other questions raised in the assignments of error of the appellant.

The judgment appealed from is hereby affirmed, with costs against plaintiff-appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Endencia, Barrera, and Gutierrez David, JJ., concur.

Padilla, J., did not take part.

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