

APOLINARIA LOPEZ, PLAINTIFF AND APPELLANT, VS. TRANQUILINO GLORIA AND THE PROVINCIAL SHERIFF OF LEYTE, DEFENDANTS AND APPELLEES.*G.R. No. 13846. August 30, 1919*

Ponente: TORRES, J.

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On June 18, 1907, an action (case No. 604) was brought in the Court of First Instance of Leyte against Tranquilino Gloria by Apolinaria Lopez, who alleged that she is the owner of two parcels of land situated in the districts of Tabunan and Magkasa of the municipality of Cabalian, Leyte; that three individuals, among whom was the defendant Tranquilino Gloria, took action to disturb her possession and property right over the said lands; that they entered upon and forcibly gathered the fruits thereof against her consent; and that, therefore, she prays the court to enjoin the said defendants from exercising any act repugnant to her rights or tending to deprive her of the possession and enjoyment, of the said lands, and in conclusion to issue a perpetual mandatory injunction. (Record No. 604, pp. 1-2.)

In his amended answer, filed December 6, 1909, denying all of the aforesaid allegations, the defendant Tranquilino Gloria alleged in cross-complaint that he is the absolute owner of the lands described in the action; that in the year 1907 the plaintiff took possession of them and has continued in said possession up to the date of the said answer; that she has refused to return same to the defendant; that consequently he has suffered damages in the amount of one thousand pesos (f%000), and that therefore he prays the court to absolve him from the action of 'the plaintiff, to declare him the owner of said lands, to order the plaintiff to deliver same to him and to pay him one thousand pesos (fF1,000) as damages (record No. 604, pp. 27, 28).

In the evidence presented at the trial of the case were several documents wherein, according to the opinion of the court, it appears that the lands in question were sold in the years 1892 and 1894 by the brothers Gerardo, Francisco, Benigno, and Dionisio, of the surname Balugu, to Tranquilino Gloria, and, in 1906, by Dionisio Balugu to the plaintiff Apolinaria Lopez (record No. 604, pp. 41, 42) ; whereas in view of the merits of the same the court declared the defendant, Tranquilino Gloria, owner of the lands in question and ordered the plaintiff to recognize, respect and return to him the property and its possession, but the court refused to uphold his counterclaim for damages for the reason that "as possessor in good faith, the fruits gathered belong to the plaintiff * * *" (record No. 604, p. 42).

From that judgment the defendant appealed to this court; but the appeal was declared abandoned for failure to prosecute, and, on October 16, 1911,[1] the record was returned to the court of origin for execution (record No. 604, pp. 88, 89).

On November 22, 1911, the same plaintiff Apolinaria Lopez presented a new action in the same Court of First Instance of Leyte against the said defendant Tranquilino Gloria and the provincial sheriff of Leyte, alleging that there had been a former suit between them; that therein the ownership of the lands in controversy had been

adjudicated to the defendant; that nevertheless the plaintiff was declared possessor in good faith; that the judgment rendered in that case was already final and had been executed at the request of the defendant who took possession of the lands in question, without paying the plaintiff the necessary and lawful expenses—a total sum of two thousand six hundred and seventy two pesos (P2,672) incurred by the construction on the land of a building (camarin) for a sugar mill, for the planting and care of two hundred and thirty-five (235) fruit-bearing coconuts and for the planting of sugar cane on an area equivalent to nineteen (19) "gantas" of seed of corn (maiz)—said building, plantings and seedlings existing on said lands at the time of the executions and the taking possession of the defendants; that before and after the execution of the judgment by the sheriff the plaintiff requested the defendant to refund the said expenses; that the latter refused to do so and insisted upon taking, as in fact he did take possession of the lands and their improvements, making use of the same to her damage; and that therefore the plaintiff prayed the court to render judgment sentencing the defendant to pay plaintiff the sum of two thousand six hundred and seventy two pesos (P2,672), or to return to the plaintiff the lands together with the right of retaining same until the complete reimbursement of said sum, with the costs against the defendant.

Defendant's demurrer to the action having been overruled, without it appearing that he may have taken any exception to the order overruling the said demurrer, the defendant filed his answer admitting all the facts alleged in the action except those concerning the improvements and their value, and prayed the court to dismiss it, with the costs against the plaintiff.

After trial and consideration of the evidence of both parties the court on April 25, 1917, rendered judgment absolving the defendant from plaintiff's action.

To this judgment the plaintiff excepted, and at the same time moved for new trial on the ground that the judgment was contrary to the weight of evidence and to law. This motion together with its exception being denied, the plaintiff filed on time the corresponding bill of exceptions which was approved and forwarded to the clerk of this court, together with all of the evidence.

For the determination of the questions of facts involved in this decision it is in conformity with the law that it should appear that, at the time the plaintiff filed her answer to the defendant's cross-complaint in the said case No. 604, which answer was received in the office of the clerk of the lower court in July, 1910 (record No. 604, p. 38), the coconuts, the sugar cane and the warehouse (camarin) taken by the defendant were already in existence inasmuch as they were already found there in 1907, and June of 1910 and 1909, respectively (according to the testimony of the only witness presented by the plaintiff, record No. 604, pp. 12, 22 and 27), the defendant presenting no other evidence than that mentioned in case No. 604 by which he claims that this action for the recovery of the improvements in the present case should have been presented as a counterclaim at the time when he filed his cross-complaint in said case No. 604, and that by not having presented it then, plaintiff is not now permitted to maintain such a claim, according to section 97 of Act No. 190, the Code of Civil Procedure. The English text of section 97 of the said Code employs the word "counterclaim" which was translated as "reconvencion" in the Spanish text, and inasmuch as the said Code of Procedure is an Act of the Commission and is based on American legal principles, in order to interpret correctly the provisions of the said section 97, it is necessary to inquire what the word "counterclaim" means in American law.

In the Encyclopedia of law and procedure the word "counterclaim" is defined as follows:

"Counterclaim (contrarreclamacion) is a claim presented by a defendant in opposition to or deduction from the claim of plaintiff. A species of set-off or recoupment introduced by the codes of civil procedure in several of the states, of a broad and liberal character, and embraces, as a general rule, both recoupment and set-off, although broader and more comprehensive than either, and secures to defendant the full relief which a separate action at law, or a bill in chancery, or a cross bill, would have secured him on the same state of facts, being

substantially a cross action by defendant against plaintiff." (34 Cyc, 629-631.)

"Recoupment (reconveneion) is the act of rebating or recouping a part of a claim upon which one is sued by means of a legal or equitable right resulting from a counterclaim arising out of the same transaction." (34 Cyc, 623.)

"Set-off (compensation) is a counter-demand which a defendant holds against a plaintiff, arising out of a transaction extrinsic of plaintiff's cause of action, the object of which is to liquidate the whole or a part of plaintiff's demand, according to the amount of the set-off, and like the modern recoupment is in the nature of a cross action." (34 Cyc, 625.)

According to the Code of New York a counterclaim (contrarreclamacion) should tend in some way to lessen or neutralize what the plaintiff is trying to recover (Bliss' New York Annotated Codes, vol. 1, p. 715), and, according to the doctrine laid down in California, the facts upon which it is based should be such as to give to the defendant the right to bring a separate action against the plaintiff, otherwise, if it only constitutes a good defence, it would not be "counterclaim" (contrarreclamacion). (Kerr Cyc. Codes of California, vol. 3, part I, p. 612, notes 30 and 3/.)

From the foregoing it is inferred that both recoupment (reconveneion) and set-off (compensation) are counterclaims (contrarreclamaciones), the first differing from the second in that the former arises out of the same transaction upon which the plaintiff's action is based, and the latter of a transaction distinct from that on which said action is based.

From the said doctrines it is also inferred that both recoupment (reconvention) and set-off (compensation) have the character of a genuine action in favor of the defendant against the plaintiff in such a manner that, independent of any other consideration, a genuine action is constituted for the defendant which could be employed separately against the plaintiff; wherefore if they only tend to oppose or to destroy the action of the plaintiff, they would constitute a good defense but not a counterclaim (contrarreclamacion.)

Furthermore, an essential condition of a counterclaim is that it tends to lessen or neutralize what the plaintiff is trying to recover, that is to say, neither denies the facts upon which the action of the plaintiff is based nor bases it on facts which directly destroy the action or cause of action of the plaintiff (because in such a case it would be only a special defence), but, taking for granted the allegation of the plaintiff the effect of said counterclaim may be to neutralize, wholly or partially, that which the plaintiff wishes to obtain. Nor does it need to have for its object to obtain a positive remedy distinct from the payment of money, like a writ of injunction or the specific performance of a contract, because it would not then be a counterclaim (contrarreclamaciyn) but a cross-complaint (contrademanda) which is governed by section 98 of the Code of Civil Procedure.

In synthesis, we are able to say that the essential requisites of a counterclaim {contrarreclamacion) which comprehends recoupment (reconvention) and set-off (compensation) are: (1) That the same be essentially a genuine action of the defendant against the plaintiff; (2) that the same should have as its object to neutralize, wholly or partially, that which the plaintiff is trying to obtain; (3) that the same does not have for its object to destroy directly the action of the plaintiff; and (4) that same ought not to pray for a positive remedy distinct from the payment of money.

It is unquestionable that recoupment (reconvention) is a counterclaim arising out of the same transaction upon which the plaintiff's cause of action is based, and that paragraph 1 of section 97 of the Code of Civil Procedure treats of a counterclaim of this kind existing at the time of the presentation of the action of the plaintiff, while paragraph 2 of the said section 97 treats of a counterclaim based upon a transaction distinct from the plaintiff's cause of action; therefore, it follows that paragraph 1 of the said section refers to recoupment (reconvention) and

paragraph 2, to set-off (compensation).

1. When the plaintiff asked for a writ of injunction, in the former suit, case No. 604, against the defendant who was disturbing her titular rights to the lands in question, was the (plaintiff) obliged to present, together with the same, her claim against the said defendant for the improvements which she had put on the lands or for payment of their value? 2. When defendant in the said case No. 604 presented a cross-complaint for damages, did the obligation then fall upon plaintiff to demand her right over the improvements in question or the payment of their value ?

Before clearing up these two points in accordance with the provision of the law of Civil Procedure by the application of the legal principles the value of which has been given the court will proceed to determine whether the plaintiff, who has acquired those lands by means of a conveyance and holds as owner in good faith, has or has not a right to the improvements which she has put on the lands, in accordance with the provision of the civil law, whereby property right is controlled and governed by substantive civil law, the source of the power which the owner exercises over the things that lawfully belong to him. Procedural laws are adjective laws which prescribe rules and forms of procedure in order that courts applying correctly laws of all kind are able to administer justice. Therefore, what is necessary and essential is if the interested party, has or has not in equity any right (which may be recognized in law) to obtain in the suit and then on obtaining some before the courts, if his claim has or has not been settled according to the established rules of procedure for the initiation, prosecution and judgment of suit.

Article 361 of the Civil Code says:

"Any owner of land on which anything has been built, sown, or planted, in good faith, shall be entitled to appropriate the thing so built, sown, or planted upon paying the compensation mentioned in articles 453 and 454, or to compel the person who has built or planted to pay him the value of the land, or to require the person who sowed thereon to pay the proper rent therefor."

The two articles hereinbefore cited are of the following tenor:

"ART 453. Necessary expenditures shall be refunded to every possessor, but only the possessor in good faith may retain the thing until they are repaid to him.

"Useful expenditures shall be paid the possessor in good faith with the same right of retention, the person who has defeated him in his possession having the option of refunding the amount of such expenditures or paying him the increase in value which the thing has acquired by reason thereof.

"ART. 454. Expenditures purely for ostentation or mere pleasure shall not be repaid the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it does not suffer injury thereby and if the successor in the possession does not prefer to refund the amount expended."

By a final judgment Tranquilino Gloria is now the owner of the two parcels of land wherein-in good faith, the plaintiff had put improvements:—sowing plants of great use, erecting a warehouse {camarin), placing therein implements for the manufacture of sugar. The same judge who rendered the said decision in the former case No. 604, declared and upheld that the plaintiff, on introducing such improvements on the lands in question, did so in good faith; that inasmuch as the defendant, who, on winning the case, was declared owner of the said two parcels of land, upon taking possession of them, took over the improvements made by the plaintiff, it is no more than just that said defendant should indemnify the plaintiff for the value or price of the aforesaid improvements—the sugar cane and coconut trees planted on the lands, the warehouse (camarin) erected thereon, and the implements and, machinery placed therein for the manufacture of sugar—entailing necessary and useful expenditures which have increased the price of the lands which the defendant now possesses. It is not just nor is it permitted by any law that the defendant, Gloria, should enrich himself at the expense, and to the prejudice, of Apolinaria Lopez, who

has expended much work and money in order that such improvements might be put on the said two parcels of land. It should be observed that article 453 above cited authorizes the one who had incurred the expense of the improvements to retain said lands until the owner shall have paid in full the value of said improvements.

When the final judgment rendered in the former case, 604, was executed the plaintiff was ejected from the said parcels of land and completely deprived of the possession of the improvements which she had made thereon in good faith, without having been able to exercise the right of retention granted by the said article 453. As the said expenses of the plaintiff were not purely for luxury or mere ostentation, the obligation on the part of the defendant, who now enjoys with positive benefits the said improvements, to refund the value of the same to the plaintiff Apolinaria Lopez, is deemed unavoidable.

Under these assumptions, this opinion being now concerned with the decision of the two questions above set forth, and examining them under the legal principles of American law, we can, thereupon, affirm that the counterclaim to which section 97 of Act No. 190 refers is expressly for, and is an obligation imposed upon, the defendant. It is an unjustifiable anomaly to oblige the plaintiff, who is in possession of the land as owner and asking for a writ of injunction, to demand the improvements thereon, or their value, from the defendant who declares himself to be the owner of the land and disturb the possession of the former, precisely at the moment of exercising the remedy of injunction to the end that her right may be protected against the defendant-intruder. Furthermore, if the said plaintiff is convinced, in good faith, that she is the owner and lawfully possesses the disputed lands by title to such, it is absurd to oblige her to claim, as an act of foresight, the improvements which she had put on the lands, or their value, because such a procedure would give a reason for suspecting her good faith and because by taking advantage of such a strange claim for improvements not the object of the suit, the defendant could allege that this anomalous and unusual pretention confirms his defense that he is the owner of the lands in question.

If the plaintiff Apolinaria Lopez were the defendant, the present defendant Tranquilino Gloria being plaintiff, in an action for the recovery of the possession of a piece of land, there is no doubt that the defendant Lopez would set up a counterclaim for the improvements or their value. But Gloria did not file any complaint in the former case for the recovery of the lands but, instead, in order to defend himself against the writ of injunction, elected by the plaintiff Lopez, demanding protection for her rights disturbed by him, he filed a demurrer alleging himself to be the owner of the lands in question, and exercising in the form of a demurrer, so to speak, the action for the recovery of the possession of a piece of land (reivindicatoria). Moreover if when exercising said remedy of injunction, the plaintiff had asked, for the reimbursement of the value of the improvements, this conduct might have given a reason to presume a tacit confession that in truth she was not the owner of the lands upon which the said improvements exists, in case that the litigation should be decided in the manner that it has been.

Concerning the second point or question above mentioned, the plaintiff is also not obliged to set up recoupment for the improvements upon answering the cross-complaint for damages, for the reason that the said plaintiff was in the possession of the lands and their improvements as owner. and the defendant, upon alleging in his defense that he was the owner of the said lands, was not claiming any right over the improvements but was only asking for damages. Against a claim of this kind there is no obligation imposed upon the defendant in the cross-complaint and plaintiff in the remedy for the writ of injunction to set up recoupment for the improvements which were not claimed by the defendant who was only suing for the ownership of the lands.

The fact that the plaintiff was defeated in an action in which she was only praying for remedy of the writ of injunction to protect her right by a judgment rendered by virtue of defense based on the right of property, cannot, under any concept, serve to compel her to present, together with the said action for the remedy of injunction, a recoupment against the defendant who was not in the possession of the lands nor of the improvements and who, in

the judgment in that case, was not declared owner of the latter.

In the judgment appealed from taking into consideration its origin, there is no ground to infer the presumption of *res adjudicata* in connection with the final judgment rendered in the said case, No. 604, inasmuch as, according to article 1252 of the Civil Code, in order that the said presumption may be admissible in this suit, it is necessary that the most perfect identity exist between the case decided by the judgment appealed from and that in which presumption is invoked with respect to the subjectmatter, cause of action, the parties thereto, and the capacity in which they litigated.

No extensive arguments nor great intellectual efforts are necessary to comprehend that, even the litigants interested in this case and the aforesaid No. 604 are the same, in no way will that fact be able to establish on a reasonable basis the existence of perfect identity between these respective cases, objects, causes and rights of action. In as much as by the former judgment Tranquilino Gloria was declared owner of the disputed lands it is not possible legally to infer, that in neither of said decision are included the ownership and right of possession of the said improvements made, and paid for by Apolinaria Lopez. It is natural that they should not be included in said decision since the right to the improvements has not been the object of the dispute and no one of the parties has claimed them as his exclusive belonging. Since, under no concept of said decision can there be included the right to the improvements; nor ground to contend that the said former decision produced the effect and consequences of a writ of inscription of property, ordered by the Court of Land Registration, for the reason that, by the express provision of law in land registration cases, when in an order of adjudication of ownership to realty in favor of a petitioner and its inscription in the property registry there is not stated in writing the encumbrances and charges which directly affect and burden the realty registered, no one can afterwards claim the existence of such encumbrances inasmuch as, in case the registration of the realty was ordered unconditionally, the petitioner obtained from that moment, by an act of law, the state of being the absolute owner of the realty so registered and of its improvements—special conditions expressly established by the Land Registration Act, which cannot be applied in favor of a party who has only obtained a recognition and declaration of ownership by virtue of a final judgment in an ordinary case.

In other respects, granting that the action instituted in this suit by the plaintiff is proper and lawful, for the failure of the defendant to submit evidence to the contrary, the following amounts are deemed invested by the plaintiff for the cultivation and clearing of the land, according to her own evidence: for the planting of the sugar cane, five hundred and sixty nine pesos (P569), (record, p. 9) ; for the construction of the warehouse (camarin) together with the costs of the implements for the cultivation of sugar, seven hundred and eleven pesos and fifty centavos (P711.50) (record, pp. 14 and 15) ; and for the planting of the coconuts, four hundred and seventy two pesos (P472) (record, pp. 16 and 17); which added to two hundred fifty pesos and fifty centavos (P250.50), the amount of the expenses incurred for the cultivation of the bamboo tress and coconuts planted on the land, give the total sum of two thousand and three pesos (P2,003).

The result of this evidence adduced by the plaintiff was not contradicted with justifiable reason by the defendant, nor was the credibility of the witness who has furnished the details of the expenses incurred by the former impugned, so that the value of the improvements in question as it was found is accepted as true, it being not unlawful nor unjust or without foundation.

The defendant, upon taking possession of the lands adjudicated to him, decided to appropriate the improvements introduced by the plaintiff thereon, for the said defendant refused to return them. The said article 361 of the Civil Code confers the right, to any owner of land, to take as his own what has been built sown, or planted on it in good faith by another upon paying the expenses incurred by the latter. Therefore, the defendant is obliged to pay to the plaintiff the value of the improvements which he preferred to retain for his benefit and use. It is not lawful that he

should enrich himself at the expense, and to the prejudice, of the legitimate owner of the said improvements.

For these considerations it follows that, with the reversal of the judgment appealed from, it is hereby declared that the plaintiff, Apolinaria Lopez, is the owner of the improvements existing on the lands now in the possession of the defendant, Tranquilino Gloria, and therefore we should condemn, as we hereby do, the latter to pay the said plaintiff the sum of two thousand and three pesos (P2,003) together with its legal interest at the rate of 6 percent per annum from the date when the defendant took possession of the land and the said improvements up to the date of its payment in full, without special finding: as to the costs of both instances. So ordered.

Arellano, C.J., Street, and Moir, JJ., concur.

Johnson, and Malcolm, JJ., dissent.

CONCURRING

ARAULLO, J.,

I concur in the findings of the foregoing decision, revoking the judgment appealed from, for the following reasons:

- That the defendant having admitted in his answer the allegations contained in the first four paragraphs of the complaint, among which are, that in the decision rendered in former judgment between the same parties it was declared that the possession of the lands in question by the plaintiff should be considered as possession in good faith, and that the defendant had not recognized nor paid to the plaintiff the value of the improvements, that is of the necessary and useful expenses incurred on the same lands; and the defendant having denied only the allegations contained in paragraphs 5 and 6 of the complaint concerning the existence of the said improvements and their value, without presenting evidence rebutting that adduced by the plaintiff respecting those particulars, the court ought to have rendered judgment, in accordance with the provision of article 361, in connection with article 45S, of the Civil Code, against the defendant as prayed for in the complaint.
- That, sections 97 and 98 of the Code of Civil Procedure in dealing, respectively, with counterclaim (?-econvencion) and cross-complaint (contrademanda) having reference not in favor of the plaintiff but of the defendant, the plaintiff, Apolinaria Lopez, was not deprived of the right to institute this new action against the defendant founded upon the decision rendered in her favor in the former judgment. Judgment reversed.

[1] R. G. No. 6846, resolution of October 3, 1911.

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