

MIGUEL TOLENTINO, PLAINTIFF AND APPELLANT, VS. CEFERINO INCIONG, DEFENDANT AND APPELLEE.*G.R. No. 15745. October 31, 1960*

Ponente: GUTIERREZ DAVID, J.

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On December 20, 1952, Miguel Tolentino filed an action in the Court of First Instance of Batangas to recover damages for libel committed by defendant Ceferino Inciong for which said defendant was found guilty in a criminal case filed against him.

Alleging that the complaint states no cause of action; that if there is any cause of action, the same is barred by prior judgment; and that the venue is improperly laid, the defendant moved that the action be dismissed. The motion to dismiss was opposed by plaintiff, and after hearing, the court below on February 13, 1953 issued an order denying the same. Reconsideration of this order having been also denied, defendant filed his answer. Thereafter, for failure of plaintiff and that of his counsel to appear at the scheduled hearing and upon defendant's motion, the case was dismissed without prejudice. On plaintiff's motion, however, the court reconsidered its order and set it aside. Defendant subsequently filed a motion for leave of court to amend his answer, which, as so amended, alleged among other things, as affirmative defenses, that plaintiff's cause of action had already prescribed. Defendant also averred under his counterclaim that he had suffered not only actual and moral but also exemplary damages in the total amount of not less than P100,000.00. Upon plaintiff's opposition that the reasons set forth in the motion do not justify the amendment and that the alleged new matters incorporated in the amended answer are entirely immaterial and of no bearing to the issues in the case, the lower court denied the motion to amend the answer. Defendant verbally asked for reconsideration and as plaintiff withdrew his opposition to the admission of the amended answer after the defendant manifested that he is reducing his counterclaim to P1,000.00, the lower court reconsidered its previous order and admitted the amended answer.

On December 13, 1955, after the plaintiff had rested his case, defendant filed another motion to dismiss, the complaint on the ground that the cause of action is barred by prior judgment and also on the grounds of prescription and non-suit. The motion was opposed by plaintiff who alleged that the grounds stated therein had already been raised by defendant in his previous motion to dismiss which had already been denied, and that the filing of said second motion to dismiss was irregular as defendant had already filed an amended answer and has entered into trial on the merits. In his reply to the opposition, defendant asserted that his motion was a demurrer to evidence and was distinct from the previous motion to dismiss. The lower court, however, on February 16, 1956 denied the motion to dismiss the complaint. Motion for reconsideration was, likewise, denied.

After the reception of evidence for the defendant, the lower court on October 17, 1956 rendered the decision complained of dismissing plaintiff's complaint on the ground of prescription. As the motion for reconsideration and new trial was denied, plaintiff appealed to the Court of Appeals. Opining that the decisive question of whether or not plaintiff's cause of action has already prescribed is one of law and that plaintiff's claim for damages, including attorney's fees and expenses of litigation, amounts to P99,500 which is beyond its competent

jurisdiction (under the law then in force), the appellate court has certified the case to this Court.

We agree with the trial court that plaintiff's complaint is already barred by prescription. Under the law prevailing prior to the effectivity of the new Civil Code in August, 1950, an action for libel must be brought within two years after the right of action accrues. (Sec. 43 [2], Act No. 190.) Under the new Civil Code, a civil action arising from libel prescribes in one year. (Tejuco vs. E. R. Squibb & Son Phil. Corp., et al., 103 Phil., 594; 55 Off. Gaz. [26] 4813; Inciong, et al. vs. Tolentino, 106 Phil., 207; 56 Off. Gaz. [50] 7618.) There being no special provision which ordains otherwise, the period must be counted from the day the action could have been brought. (Article 1969, old Civil Code; Art. 1150 of the new.) Consequently, a written defamation becomes actionable upon its publication, or when communicated to third person or persons. In case of a libel committed by a newspaper, the period for bunting the action should be computed from the date the publication goes into circulation. (53 C. J. S. 133.) It appearing that from July 24, 1949, when the libelous matter was published and circulated in a newspaper owned by defendant, to December 24, 1952, when the present action for damages arising from said libelous publication was filed, a period of three years and five months had elapsed, it results that the said action has already prescribed whether the prescriptive period be computed under the new Civil Code or the laws previous thereto.

Contrary to plaintiff's contention, the cause of action for damages arising out of libelous publication does not accrue only after the decision in the corresponding criminal action has become final. Article 33 of the new Civil Code provides that the civil action for defamation may be brought by the injured party separately from the criminal action, and such civil action shall proceed independently of the criminal prosecution. It may be argued that the rule contained in the new Civil Code does not apply in this case because the libel was committed on July 24, 1949, or before the effectivity of the said Code. The fact remains, however, that after the new Civil Code took effect on August 30, 1950 plaintiff could have availed himself of Article 33 thereof for the purpose of bringing the civil action for damages. Computing the period of prescription from that date, the complaint is still barred by the statute of limitations.

Neither may plaintiff now claim that defendant, under section 8 of Rule 26 of the Rules of Court, has waived the defense of prescription, the same not having been included in his first motion to dismiss. For, actually, the defense of prescription was included as one of the affirmative defenses in defendant's amended answer, which was admitted by the trial court, after plaintiff had withdrawn his opposition thereto. Under section 2 of Rule 17, a wide discretion is given to trial courts in allowing amendments to pleadings, and under the facts of the present case, and in furtherance of justice, we think the trial court was clearly within its powers in allowing the amendment in question. Anyway, the waiver applies to defenses "that would raise issues of fact not appearing upon the preceding pleading." (Secs. 9 and 10, Rule 9.) In the case at bar, no issue of fact was involved by defendant's claim of prescription. The two dates necessary for computing the period of prescription are alleged in the complaint itself. In other words, the defense of prescription may be gleaned and is apparent from the face of the complaint. Defendant's failure to plead it in his first motion to dismiss did not, therefore, constitute a waiver. (See Chua Lamko vs Dioso, 97 Phil., 821.)

Having arrived at the above conclusion, it becomes unnecessary to pass upon the other questions raised by the parties,

Wherefore, the decision appealed from dismissing plaintiff's complaint is affirmed, with costs.

Paras, C.J., Bengzon, Padilla, Bautista Angela, Labrador, Reyes J.B.L., Barrera, and Paredes, JJ., concur.

Judgment affirmed.

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