

JOSE PEREZ CARDENAS, PLAINTIFF AND APPELLEE, VS. PEDRO CAMUS, DEFENDANT AND, APPELLANT.

G. R. No. 17191. July 30, 1962

Ponente: DIZON, J.

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DIZON, J.:

On May 26, 1941 appellant Pedro Camus, with appellee J. Perez Cardenas as guarantor in solidum, executed in favor of Jose Garrido a promissory note in the sum of P2,000.00 payable as follows:

"During the first twelve consecutive months beginning June 1941, the sum of P360.00 in twelve equal installments of P30.00, each installment to be paid on or before the fifth day of every month;

"Then the balance of P1,640.00 in thirty-two equal installments of P50.00 and one last installment of P40.00 beginning the thirteenth month and consecutively thereafter, each installment to be paid on or before the fifth day of every month;"

The note further provided that if any two installments were not paid as stated therein, the whole unpaid principal shall forthwith become due and payable.

Appellant and appellee having failed to pay as agreed upon, Garrido instituted against them the corresponding action (Civil Case No. 21439) in the Court of First Instance of Manila. As appellant could not be served with summons, the case proceeded with respect to herein appellee only, against whom decision was rendered for "the sum of P2,000.00, with 6 per cent interest thereon from the filing of the complaint on December 15, 1953, until its full-payment, plus the sum of P200.00 for attorney's fees."

The above decision was affirmed by us on appeal and, after the case was returned to the lower court for execution, appellee paid the total sum of P2,910.00 in full satisfaction thereof. Thereafter appellee made verbal as well as written demands for payment upon appellant and, as a result thereof, in the month of September, 1958, the parties agreed that appellant would pay appellee the total sum of P3,123.00 at the rate of P25.00 every payday beginning from December 24, 1958. After making three of these payments, however, appellant defaulted, thus giving rise to the institution of the present action in the Court of First Instance of Rizal to secure judgment as follows:

"(a) Sentencing said defendant to pay unto the herein plaintiff what the latter has paid in Civil Case No, 21439 and the total expenses into which he was incurred in the prosecution of his defense in said case, minus the P75.00 payment made by said defendant, leaving a balance of ...

P3,048.45

(b) Moral damages

10,000.00

(c) Correctional damages

5,000.06

(d) Attorney's fee

1,000.00

Total

P19,048.45

(e) Costs against the defendant; and,

(f) Granting such other relief and remedy compatible with law and equity."

The answer filed by appellant; after admitting some material averments of the complaint and denying others, alleged the following affirmative defenses: .

"1. That under Rule 3, Sec. 1 (e) plaintiff cause of action is barred by a prior judgment and by the statute of limitations, he having failed to interpose a cross-claim against the herein defendant in Civil Case No. 21439;

"2. That no moral damages may be recovered as this case does not fall within those enumerated in Art, 2219 of the Civil Code and no corrective or exemplary damages can be interposed under Sec. 5, Arts. 2229-2233 of the Civil Code as the case is not included therein aside from the fact that plaintiff is not entitled to moral damages and therefore in accordance with Art. 2234 of the Civil Code cannot claim for the same.

"3. That no attorney's fees and expenses of litigation, other than judicial costs, can be recovered under Art. 2203 as this case does not fall within any of the exceptions mentioned therein."

Issues having thus been joined, the case was set for trial on March 22, 1960 in accordance with the notice of trial served upon the parties under date of January 15, of the same year. However, on March 18, 1960, that is, four days before the date thus set for the trial of the case, appellant filed a motion to dismiss the complaint on the ground that (a) "the court had no jurisdiction over. the case, the venue of the action having been improperly laid" and (b) "that plaintiff's cause of action is barred by prior judgment due to his failure to interpose a cross-claim against the herein defendant who was his co-defendant in Civil Case No. 21439 of the Court of First Instance of Manila." Appellant set this motion for hearing on Saturday, March 26, 1960, that is, four days after the date set for the trial of the case on the merits. On the same day—March 18, 1960—appellant also filed a motion for continuance.

When the case was called for trial on March 18, nobody appeared for appellant, and the lower court, after denying his motion for continuance for lack of merit, received appellee's evidence, and on March 23, 1960 it rendered judgment as follows:

"WHEREFORE, the court renders judgment, one in favor of plaintiff and against the defendant, by ordering the defendant Pedro Camus to pay to plaintiff the total sum of P3,048.45, with legal rate of interest thereon from the date of the filing of this case until fully paid for; by ordering the same defendant to pay to plaintiff the sum of P500.00 by way of attorney's fees in this case; and for the defendant to pay the costs. In view of the nature of this case and the transaction involved, the court cannot grant any moral and correctional damages."

From the above judgment appellant took the present appeal claiming that the lower court committed the following errors:

"1. The lower court erred in ignoring defendant's motion to dismiss and failing to decide the same before trying and deciding this

"2. The lower court erred in denying defendant's motion for continuance considering the fact that there was a motion to dismiss still pending which challenged the very jurisdiction of the court.

"3. The lower court erred in assuming jurisdiction, of this case when the venue of the action was improperly laid."

The motion for continuance filed by appellant was correctly denied. Aside from the fact that the granting or denial of a motion of such kind is a matter within the sound discretion of the trial court, we have to consider in this case the following circumstances: In the first place, appellant had filed his answer to the complaint since January 12, 1960, but it was only on March 18 of the same year, after having been served with notice setting the trial of the case for March 22, 1960, that he filed his motion for continuance and his motion to dismiss the complaint, the latter upon grounds substantially the same as the affirmative defense set forth in his answer. In the second place, the mere fact that appellant set the hearing of his motion to dismiss on March 26, 1960, that is, four days after the date set forth for the trial. of the case, when he could very well have set it for hearing on this latter date, did not tie up the hands of the trial court in the sense of giving it no other alternative but to grant the continuance sought. In the third place, it is obvious that the motion for continuance was intended to delay the trial and termination of the case. In view of these circumstances, we cannot find our way clear to disturbing the action taken by the lower court in the premises.

With respect to the motion to dismiss the complaint, it is true that the record does not affirmatively show that the trial court had decided it before receiving appellee's evidence and rendering the appealed, judgment. It must be observed, however, that, as already adverted to, said motion was not only a mere reiteration of the defenses set forth in the answer, but appellant set it for hearing four days after the date fixed for the trial on the merits. Appellant had no right to do so as a means of forcing upon the court and his opponent the desired postponement of the trial. Moreover, after denying appellant's motion for continuance, it cannot be said that the trial court was still under obligation to pass upon the motion to dismiss which appellant set for hearing four days later.

To the foregoing must be added the further consideration that the question of jurisdiction raised in the aforesaid motion is manifestly unsubstantial. Jurisdiction over the subject matter is determined upon the allegations made in the complaint, irrespective of whether the plaintiff is entitled or not entitled to recover upon all or some of the claims asserted therein—a matter resolved only after and as a result of the trial. Neither can the jurisdiction of the court be made to depend upon the pleas or defenses pleaded by the defendant in his answer or motion to dismiss, for, were we to be governed by such rule, the question of jurisdiction would depend almost entirely upon the defendant.

As regards the alleged bar by prior judgment, we believe that the same is also without merit. As stated heretofore, appellant could not be summoned when, together with appellee, he was sued by Jose Garrido in Civil Case No. 21439 of the Court of First Instance of Manila. This, obviously, was not appellee's fault at all. How could he be blamed for not filing a cross-claim?

In view of all the foregoing, the decision appealed from is affirmed, with costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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